(1)

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No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1992

In Re CRAIG TWEEDY, Petitioner

PETITION FOR WRIT OF MANDAMUS

CRAIG TWEEDY
202 WELLS BUILDING
SAPULPA, OKLAHOMA 74066
918-224-2222

PRO SE, ATTORNEY AT LAW

DECEMBER 11, 1992

QUESTIONS PRESENTED

1. Whether Court of Appeals owed sound duties to direct the District Judge to vacate plain usurpations of power causing the immune State Court fraud claim to disappear by substitution imposed and enjoined to favor the wrongdoer and imposing an appeal thwarting sanction and enjoining appeal rights threatening irreparable harm and imprisonment for seeking relief?

2. Whether the decisions of the Court of Appeals are conclusory and obstruct writ review by failure of findings to explain writ refusals and sanction imposed for seeking mandamus relief from clear abuses of settled law and due process obstructing appellate jurisdiction?

3. Whether it appears improbable that 10 Circuit Judges were permitted

petition awareness of plain abuses of intent of the Federal Rules, Anti-Injunction Act, Due Process Clause, and dictates against fraud settled by this Court? If so, does it appear that the Court of Appeals may have been covertly abused from within by means protecting select wrongdoing?

PARTIES INVOLVED

The parties involved in the proceeding below were this Petitioner, Craig Tweedy, his former client, Lillian Graham, and American Airlines, Inc., a corporation held by AMR Corporation.

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1992

In Re CRAIG TWEEDY, Petitioner

PETITION FOR WRIT OF MANDAMUS

DECISIONS BELOW

The March 31, 1992 Order (Appendix "A") was rendered below in Case No. 91-C-762-B by the United States District Judge for the Northern District of Oklahoma, Thomas R. Brett, in granting various injunctions against the Defendants below, Craig Tweedy and Lillian Graham, and in favor of a State Court Defendant, but Plaintiff below, American Airlines, Inc.

The June 15, 1992 decision executed by the Clerk for the United States Court of Appeals for the Tenth Circuit denied the Petition For Writ of Mandamus filed in No. 92-5107 by the unexplained

satisfied the requirements for invoking mandamus relief" (Exhibit "B").

The September 14, 1992 decision executed by such Clerk (Appendix "C") denied the Petition For Rehearing, With Suggestion En Banc, by reporting that none of the of the ten (10) judges named had requested that the Court be polled on rehearing en banc.

The second September 14, 1992 decision executed by such Clerk (Appendix "D") imposed a sanction upon Craig Tweedy, based upon the unexplained conclusion of his "frivolous" seeking of mandamus petitions not being "supported by law or fact."

GROUNDS AND JURISDICTION FOR MANDAMUS RELIEF

(i)

The District Court Order of March 31, 1992 (Appendix "A") was challenged

by Petition for Writ of Mandamus filed with the Court of Appeals below.

Such Petition was denied by the June 15, 1992 decision of the the Court of Appeals below (Appendix "B").

The Court of Appeals decision of September 14, 1992 (Appendix "D").

(ii)

The Petition for Rehearing, With Suggestion En Banc, was denied by the separate September 14, 1992 decision of the Court of Appeals (Appendix).

(iii)

The Supreme Court has discretionary jurisdiction and authority to issue a writ, or writs of mandamus, under Title 28, United States Code, Section 1651(a) providing, "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective

jurisdictions and agreeable to the usages and principles of law."

(iv)

Exceptional circumstances warrant a discretionary writ of mandamus relief in aid of obstructed appellate jurisdiction and writ review. The conclusory and wholly unexplained decisions of the Court of Appeals below have so far departed from the accepted and usual course of judicial proceedings and have sanctioned such departures by the District Court, as to call for an exercise of this Court's power of supervision.

Writ review is obstructed by conclusory and unreviewable Court of Appeals' decisions operating to endorse appeal rights being thwarted and enjoined to obstruct appellate jurisdiction. The Court is impeded in its review of

important deprivations of due process and property interests arising from exceptional and select means. Such select means are clear from the District Court level and from the appearance or probablility of covert abuses of the Court of Appeals from within. Clearly abuses are the Court settled intent for the Federal Rules, Anti-Injunction Act, 28 U.S.C. §2283, Due Process Clause, appeal rights and dictates against fraud benefit.

(v)

Pursuant to Supreme Court Rule 20(1), adequate relief cannot be obtained in any other form or from any other court. The Petitiners' appeal right has been enjoined and further thwarted by a $40,333.01 sanction for a vexatious claim created and imposed by judicial fiat. Plain usurpations of power and

jurisdiction were, in effect, endorsed by wholly conclusory Court of Appeals decisions, which, likewise, imposed a $1,500 sanction for frivolous seeking of mandamus relief. Thus, appeal rights disappeared, along with the actual State Court fraud claim and due process.

THE STATUTES, FEDERAL RULES, DUE PROCESS CLAUSE AND ARTICLE III JURISDICTION INVOLVED

The Due Process Clause, the Fifth Amendment to The Constitution of the United States provides, "No person shall be * * deprived of life, liberty or property, without due process of law."

Article III, Section 1, of the United States Constitution provides, "The judicial power of the United State, shall be vested in one Supreme Court and in such other inferior Courts as the Congress may from time to time ordain and

establish," and by Section 2, "The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the laws of the United States * * under their Authority."

The Anti-Injunction Act, Title 28, U.S.C. Section 2283 provides, "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment."

Rule 8(f), Federal Rules of Civil Procedure, provides that, "All pleadings shall be so construed as to do substantial justice."

Title 76, Oklahoma Statutes, Section 2 provides, "One who willfully deceives another, with intent to induce him to alter his position to his injury or risk,

is liable for any damage which he thereby suffers."

Title 12, Oklahoma Statutes, Section 95(3) provides, "Within two (2) years * * action for relief from fraud-the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud."

Rule 3, Federal Rules of Appellate Procedure, provides, "Appeal as of Right * * from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the District Court * *."

Title 28, United States Code, Section 1291 provides, "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States * *."

STATEMENT OF CASE

1. The State Court Claim Against Extrinsic and Material Fraud Discovered Was Proper.

The record facts presented to the Court of Appeals below are that Lillian Graham's petition for damages was brought against American Airlines, Inc ("AA") and others on September 10, 1991 in the District Court of Tulsa County, Oklahoma. Craig Tweedy filed such petition as her attorney.

Such State Court Petition (App., at 57-79) stated a single fraud claim and wrong, at ¶¶3-5 (App., at 58-62), for the extrinsic and material fraud discovered. It stated the discovered extrinsic fraud of former inducing pretexts of AA's 1985 overhaul of jet engine, S/N 644980, as formerly accepted by her (Id.). It stated the surprise

discoveries that such 1985 engine overhaul did not happen, and that forged Federal Air Regulations ("FAR") safety records had falsely showed such 1985 engine overhaul, plus the discovery of the FAA concert essential to AA's active concealment of such engine overhaul fraud and FAR records forgeries (App, at 59-61,68-70,76-77).

It stated Ms. Graham's former reliance in good faith upon such material 1985 engine overhaul pretext to her substantial detriment (App., at 59-60).

2. The Fraud Claim Was Protected by the Anti-Injunction Act.

The Anti-injunction Act, 28 U.S.C. §2283 protected the State Court fraud claim, because it did not seek to relitigate any issue formerly and actually decided in former federal court litigation between Ms. Graham and AA, nor

did it need to do so. In such former matters, the controlling fact is that the pretext of AA's 1985 engine overhaul did not become an issue decided. AA's 1991 injunctive pleadings below did not and could not state otherwise (App, at 80-116).

The pretext of AA's 1985 engine overhaul had not been formerly, or fairly raiseable, because of AA's discovery failures and active concealment with the concert of the FAA and others (App., at 59-61,74-77).

As a former AA mechanic, Ms. Graham had attempted to defend her litigation claim and rights her unlawful termination. She did so, based, in substantial part, upon important gaps in the FAR records reporting AA's 1985 engine overhaul (App., at 61,63,67). The missing FAR records would have included

those requiring her signature, if she had worked on any engine part, such as turbine disc S/N 9B6198 removed from its engine S/N 644980, during such engine's 1985 overhaul by AA, the accepted pretext (App., at 59-61,74-76).

The fact issues and claims were decided against her by the District Court below, including a finding of her 1985 work damage to turbine disc S/N 9B6198 (Appendix A, at 3-4), one damage element to her State Court fraud claim.

3. The U.S. DOT Investigation of FAA Misconduct.

Subsequent to the conclusion of such former litigation, the surprise discovery of the non-event of AA's 1985 engine overhaul arose from Freedom of Information access to engine and FAA records secured in November, 1990 by Agents for the Office of Inspector

General, U.S. DOT (App., 63,67-71).

Such records were secured during the OIG's investigation of the June, 1990 misconduct of the FAA with AA in Ms. Graham's federal discovery efforts to secure the actual FAR records of the 1985 engine overhaul (App., at 67-71). Such official effort was adjunct to the OIG investigation of FAA misconduct, or inaction during the 3 years of FAR records forgeries forcing 60 criminal indictments in mid-1990 against Eastern Airlines management (App, at pp. 69-70).

4. The Fraud Claim Was Distinct From its Recoverable Damages.

The discovered claim (Appl., at 58-62) needed only the basic fact issues of whether the 1985 engine overhaul happened, and whether Ms. Graham had relied upon such pretext to her

detriment. Recoverable damages to her rights arose from the unlawful plan of false charges and testimony, forged FAR engine records and FAA concert. Those damages included the impossibility of the turbine disc being removed from its engine and damaged in 1985 repair work by anyone (Id.).

5. AA Urged Injunctive Abuses.

Relief from such discovered extrinsic and material fraud upon Ms. Graham's rights and District Court below, with FAA concert, was first sought by a December 24, 1990 Rule 60(b) Motion to Vacate, but such motion was not heard as being untimely filed (App., at 148-150).

AA was caught by the timely filed State Court fraud claim in its unlawful concert with the FAA and others to obstruct justice. No problem. AA brought Craig Tweedy back to the District

Court below as named defendants and urged injunctive relief requiring abuse of settled law and due process (App., at 80-116,119-153).

AA's lengthy injunctive pleadings did not mention the discovered claim of extrinsic 1985 engine overhaul fraud, nor AA's former 1985 engine overhaul pretexts basing such claim (App., at 80-116). AA could not have been more vague. AA urged that the State Court proceeding somehow sought to improperly relitigate unspecific fact issues decided by the district court below (App., at 86-88).

6. The Biased and Void Fiats.

Judge Brett refused to disqualify for challenged bias (App., at 155). If the actual claim had sought to improperly relitigate an issue formerly decided, Judge Brett would have enjoined it

directly by his Order of March 31, 1992, but did not (Appendix "A").

Following and adopting AA's pleading lead (App., at 80-88), said Order (Appendix A) avoided mention of the actual State Court claim and its stated fraud ground of the 1985 engine overhaul fraud discovered. The immune claim simply disappeared, while AA received the prohibited benefit of its extrinsic fraud.

Judge Brett abused the substantial justice and fairness required by the Federal Rules of Civil Procedure, specifically Rule 8(f). He arbitrarily create and imposed a relitigation exception to the Act as being the State Court proceeding, which he enjoined to favor AA. He unfairly adopted (Appendix A, at 1-2) AA's pleading description of the unmentioned State Court fraud claim

as being a proceeding, "seeking to * * relitigate * * the issue of whether or not Graham damaged a 4th staqe turbine disk (sic)."

Thus, Judge Brett arbitrarily imposed one element of recoverable fraud damages as the claim, contrary to the authorities of law and equity empowering the actual claim (Appendix A, at 1-2, 19-20). He did so by completely avoiding mention of the actual claim and extrinsic 1985 engine repair/overhaul fraud discovered and by arbitrarily concluding (Appendix A, at 19-20) that,

"the gravemen of Graham's pending state court proceeding is that the repair of, and therefore the damage to, the 4th stage turbine disk of the Ports of Call engine occurred in 1982 and could not have occurred in 1985 as found by Judge Cook." (Emphasis added)

By changing this Court's shall nots to may, Judge Brett made the quantum leap from discovered engine overhaul fraud to a discovered 1985 disc fraud and imposed a recoverable fraud claim damage as a claim favoring the select AA.

Based upon such unfair editing of words and legal meanings, Judge Brett applied the bar of "res judicata and collateral estoppel" and enjoined "Defendants" from "proceeding further in the state court proceeding" imposed (Appendix A, at 19-20). He abused the fraud and equity exceptions to such doctrines, as settled by the Supreme Court (App., at 119-153).

It was impossible for disc S/N 9B6198 to have been removed from its engine and damaged by anyone in 1985. The discovered claim showed that engine S/N 644980 had not been opened and

overhauled by AA in 1985 (App., at 59-62, 70).

The immune claim was made to disappear, because settled law and due process was inconvenient to AA.

7. Appeal Rights Obstructed.

The due process muggings continued. Judge Brett imposed an appeal impeding attorney fee and cost sanction against this Petitioner for the vexatious proceeding imposed (Appendix A, at 21-24) and caused its assessment at $40,333.01 (App., at 163-164).

Moreover, Judge Brett broadly enjoined appeal rights, or the seeking of any relief and threatened contempt (Appendix A, at p. 11), as follows,

"These Defendants are further enjoined from instigating * * any further action or proceeding, in either state or federal court or any court * * on these

same claims and/or issues. Any violation of the Court's injunction by either Defendant will subject the violator to appropriate sanctions." (Emphasis added)

The oppressive meaning and intent of Judge Brett's injunctive language enjoining appeal and writ was given interprative emphasis by AA's still pending June 15, 1992 Motion For Citation Of Contempt (App., at 166-176). By said Motion, AA confidently urged imprisonment for the contempt of seeking mandamus relief from the Court of Appeals in Case No. 92-5107 as a "substitute petition for an appeal from the March 31, 1992 Order" and explained that,

"Such conduct evinces an intent by Tweedy and Graham to evade and ignore the Court's March 31, 1992 Order (App., at 171) * * The purpose * * was clear, i.e., to declare an end to the Graham

litigation * * monetary sanctions alone do not deter Tweedy and Graham (App., at 173) * * A * * conditional order of imprisonment should be entered against TWEEDY and GRAHAM, in view of their obvious indifference (App., at 175)."

To date, Judge Brett has not formally denied such ominous meaning of his injunctive language and has ratified it. He threatens imprisonment for seeking any relief from his plastic fiats of non-law.

8. A Covert White-Wash Appears.

The Petition for Writ of Mandamus filed in No. 92-5107 with the Court of Appeals (App., at 1-28) and Petition for Rehearing, With Suggestion En Banc (App., at 29-56) showed that plain usurpations of power were newly defined. The actual fraud claim disappeared via plastic fiats of non-law and without subject matter

jurisdiction and authority under the Act and Federal Rules. (App., at 19-26)

The treat of irreparable harm from seeking an ordinary appeal could not have been more severe and clear than by such rights being impeded by sanction and enjoined, with imprisonment threatened for seeking relief.

Such extraordinary grounds demanded the sound discretion of mandamus relief in aid of the obstructed appellate jurisdiction and threats against due process.

It is inconceiveable that ten (10) circuit judges were permitted petition review and condoned such exceptional abuses, certainly without an attempted explanation, or dissent. Such sound premise taints the conclusory decisions with the appearance of the Court of Appeals being covertly abused from

within.

The decision of September 14, 1992 (Appendix C) was executed by the Clerk and reported that, "The materials submitted by Petitioners have been reviewed by the members of the hearing panel, who conclude that the original disposition was correct. * * The petition is denied on the merits. "No member of the hearing panel and no judge in regular active service on the court having requested that the court be polled on rehearing en banc * * the suggestion for rehearing en banc is denied."

The Clerk had earlier executed the June 15, 1992 decision (Appendix B) stating the wholly unexplained and abusive conclusion that, "Petitioners have not satisfied the requirements for invoking mandamus relief."

The second September 14, 1992

decision executed by the Clerk (Appendix D) imposed a $1,500 sanction. Such sanction was based upon an equally unexplained and abusive conclusion that, "The mandamus petition which Mr. Tweedy filed was frivolous, as was the petition for rehearing following it. Neither pleading was supported in fact and law."

Cogent and soundly based findings in support of such conclusions were not attempted, nor available. However, the appearance of select and internal abuse of the honor system of such Court does not necessarily taint the Clerk, or Circuit Juges mentioned by said decisions.

The frightened Lillian Graham withdrew from her rights.

REASONS FOR MANDAMUS RELIEF

The Supreme Court of the United States is, respectfully, urged to issue a

writ of mandamus in aid of appellate jurisdiction. Important reason for such sound exercise of discretion are the improper obstructions to the Court's appellate jurisdiction and writ review. The more exceptional reason is the important appearance of the unjudicious means extant, or in place to protect select wrongdoers by depriving rights guaranteed by Due Process Clause.

The root cause of this exceptional problem must be addressed with the candor required to teach the root remedy, or solutions. The record of extraordinary abuse shows the reasonable probability of extant means, or system of covert white-washes of select abuses, with expectations from below, plus such chilling possibllity in other Circuit Courts. Such abuse is of due process, settled law and the courts below.

It is absolutely inconceiveable that ten (10) circuit judges received the mandamus petitions and were privy to what appears to be deliberate white-washes of clear judicial fiats and unfair deprivations of due process.

The record shows the actual State Court claim, due process and appeal rights being made to disappear. It shows the appearance and probability of such select means being endorsed, with expectation. The Court addressed similar due process abuses by observing that it is,

"like saying to a party, appear and you will be heard; and, when he appears, saying, your appearance will not be recognized, and you will not be heard," Windsor v. McVeigh (1876) 93 US 274, 23 Led 914, 918. "The touchstone of due process in protection of the individual

against arbitrary action of government * * to prevent governmental power from being 'used for purposes of oppression,'" Daniels v Williams (1986), 474 US 327, 331, 88 L ed 2d 662, 668, 106 S Ct 662.

The due processes, "prevent even the probability of unfairness," (Emphasis added) In Re Murchison (1955), 349 US 133, 136, 75 S Ct 623, 625.

Such probability of unfairness arises from clear fiats, absent the appearance of covert white-washing.

Consider the Petitioner being sanctioned by both Courts for defending the immune claim and due processes, under settled law. Consider the conclusory endorsements, without sound explanations attempted, or available, and without dissent expressed.

Such select and covert means appear to to have been a system in place,

because of the appearance of undue expectations from the fiats below. Such select system appears to say that when one opposes a select wrongdoer, he may not expect to receive a fair hearing under procedures of settled law from impartial judges within federal courts of public justice.

Such appearance, or probability of partial and predisposed judicial means for select treatment plainly undercuts the due process core declared by the Court in Marshall v Jerrico, Inc. (1980), 446 US 238, 242, 100 S Ct 1610, 1613, 64 L ed 2d 182, that the,

"neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts and law * * with assurance that the arbitor is not predisposed to find

against him." (Emphasis added)

The select means of record in this matter clearly abused the intent of the Federal Rules, Article III jurisdiction under the Anti-Injunction Act, 28 U.S.C. §2283, and the dictates against fraud, as settled by Court's decisions discussed in propositions below.

The Court has make clear that, if a, "court's action involves a plain usurpation of power, the court's judgment is void," United States v Walker (1883), 109 US 258, 266, 27 Led 927; United States v United States Fidelity & Guaranty Co. (1940), 309 US 506, 60 S Ct 653.

Absolute power corrupts, absolutely. If, as it appears, covert circuit tyrants sequestered the mandamus petitions to command internal means to produce white-wash decisions, they assumed

absolute power for their abused court and deemed such decisions as from the court of last resort.

If so, such abuses of settled law must be predicated upon perceived 5,000 to 1 odds against Supreme Court review, because it tends to accept a limited number of important cases involving unsettled law.

Such 5,000 to 1 odds should be fully reversed, however. The State Court fraud claim disappeared with appeal and due process rights enjoined, with the threat of imprisonment. It is improbable that 10, or any panel majority had an opportunity to review such plain usurpations of power and gross abuses. Such appearance defied newness to the select means, or system.

Such appearances of a select means emphasis to the clear fact that, if the

State Court fraud claim had been improper, it would have been enjoined, rather than being made to disappear. What of the sanctions and endorsed threat of imprisonment for exercising those appeal and due process rights conferred by Congress and the Due Process Clause.

The fact of select fiat treatment at the district court level acts with the reasonable probability of a covert and system extant within the Court of Appeals below to protect the powerful wrongdoer from the inconvenience of law, but at the expense of due process and jsutice in the federal courts.

Such record facts and appearances invoke exceptional demands for the Court's review of its settled authorities law and due process. However, the Court's appellate jurisdiction and writ review are obstructed from below. Such

obstructions fully warrant, or demand a writ of mandamus vacating the conclusory Court of Appeals decisions, with remand instructions for appropriate attention by the full Court of Appeals below, or en banc.

The abuses injure and threaten the property, due process, appeal rights and liberty of this Petitioner, and are important, along with the injured rights of his former client. However, the facts and appearances of the unneutral, predisposed and extant means causing such abuses and protecting the select wrongdoer from within the abused federal courts of public justice are more exceptional.

1. Precedent for Vacating Conclusory Decisions.

When decisions of importance do not make findings to explain the basis for

controversial rulings, particularly required by the demands of due process, such decisions are to vacated and remanded. See, Harris v. Rivera (1981), 454 US 339, 344, 70 Led 2d 530, 535, 102 S Ct 460; Morrisey v. Brewer (1972), 408 US 471, 489, 33 L ed 2d 484, 92 S Ct 2593; Taylor v. McKeithen (1972), 407 US 191; Virginia Railroad Company v. United States (1926), 272 US 658, 675, 71 L Ed 463, 472, 47 S.Ct. 222.

Under such reasoning and in aid of appellate jurisdiction, the conclusory decisions of the Court of Appeals should be vacated as unreviewable obstructions to writ review. Such impeded review is of exceptional record facts and appearances of an established means to selectively deny due processes and white-wash the result, while obstructing review.

The conclusory September 14, 1992 decision (Appendix D) is wholly devoid of any findings to support the $1,500 sanction imposed on this Petitioner for his mandamus petitions not being "supported by fact or law" and, thus, "frivolous." Based upon the record, such unexplained conclusion absolutely declares that the Petitioner and his former client possessed no rights, from and after AA urging abusive injunction from Judge Brett.

There are no findings (Appendix B, C & D) to justify how Judge Brett caused the actual State Court claim to disappear, without exercising plain usurpations of power to abuse the constraints of the Federal Rules and Anti-Injunction Act, 28 U.S.C. §2283; nor how appeal rights may be fairly and lawfully impeded and thwarted by a

$40,333.01 sanction for sponsoring the vexatious proceeding imposed by judicial fiat.

There was no attempt to rationally explain a lawful and constitutional basis for rights to seek any relief, whether by appeal or writ, being thwarted, enjoined and threatened with imprisonment (Appendix B, C & D); nor why the injunctive order, which was powerless for excesses of authority and jurisdiction and violating due process, was permitted to stand (Id.).

2. The Proper State Court Claim.

The State Court Petition, at ¶¶3-5 (App., at 58-62), states its sole fraud claim of injury to Ms. Graham's rights shown by the discovered extrinsic and material fraud of AA's 1985 engine overhaul, with FAA concert.

"A cause of action does not consist

of facts, but of the unlawful violation of a right which the facts show," Baltimore S.S. Co. v. Phillips, 274 US 316, 321, 47 S Ct 600, 602.

The actual claim against extrinsic fraud was empowered by Title 76, Oklahoma Statutes, Section 2, providing that, "One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers."

Relief from such discovered extrinsic fraud is empowered by Oklahoma decisional law, under State Ex Rel. Burke v. Oklahoma City (Okl. 1974), supra, 522 P2d 612, 618-619.

Such an action for independent relief from extrinsic and material fraud discovered is, likewise, settled under federal common law. See, 1B Moore's Federal Practice, Res Judicata, ¶0.407,

pages 282-285 and the Court's authorities against fraud and such exception to res judiciata principles.

The Court in Holmberg v. Armbrecht (1946), 327 US 392, 396, 66 S Ct 582, 585, affirmed the judicial duty that, "Equity will not lend itself to such fraud and historically has relieved from it."

In Commissioner of Internal Revenue v. Sunnen (1948), 333 US 591, 597-598, 68 S Ct 715, 719, the Court reasoned that claim or issue preclusion arises from a final judgments, which,

"puts an end to the cause of action, * * absent fraud or some other factor invalidating the judgment. * * But where the second action between the same parties is upon a different cause or damand, the principle of res judicata is applied * * * only as to those matters in

issue or points controverted, upon the determination of which the finding or verdict was rendered." (Emphasis added)

Such authorities empowered the actual fraud claim as fairly coming within the exceptions to the principle of res judicata, or issue and claim preclusion. Settled law simply prohibits courts from providing the benefit of such extrinsic and material fraud.

The Court expressed such reasoning under the apt due process test that, "whether the party against whom an estoppel is asserted had a full and fair opportunity to litigate is a most significant safeguard." Parklane Hosiery Co. v Shore (1979), 439 US 322, 328, 58 Led 2d 522, 560. The Court earlier stated such exception to preclusion as,

"Under the Throckmorton doctrine, for fraud to lay a foundation for an

independent action, it must be such that it was not in issue in the former action, nor could it have been put in issue by the reasonable diligence of the opposing party," Toledo Scale Co. v. Computing Scale Co. (1923), 261 US 399, 425, 43 S Ct 458, 465.

Such settled authority and reasoning explains why the actual claim had to disappear by replacement. It explains, in part, the select system invoked by AA and the means providing AA with the prohibited benefit of its unlawful plan of extrinsic 1985 engine overhaul fraud, forged FAR records and FAA concert.

3. The Anti-Injunction Act Precluded Injunctive Powers.

It is exceptional that the actual claim of discovered fraud was first presented for relief from the Federal Court below, but branded untimely.

Moreover, such timely filed State Court claim was not heard, before it simply disappeared from the Court's appellate jurisdiction, with conslusory endorsement.

Such claim disappeared, because it did seek, nor need to relitigate a formerly decided issue. Therefore, such claim was fully protected the Court settled intent of the relitigation exceptiion of the Anti-Injunction Act and reasoning below.

"It is the duty of the courts to be alert to provide such remedies as are necessary to make effective the Congressional purpose," Cort v. Ash (1975), 422 US 66, 45 Led 2d 26, 40. More apt to the select abuses in this matter, the Court declared,

"Courts are constituted by authority, and they can not go beyond the

powers delegated to them. If they act beyond the authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal." (Emphasis added) Valley v Northern F. & M. Ins. Co (1920), 254 US 348, 65 Led 297, 300

Such reasoning is joined In Stoll v Gottlieb (1938), 305 US 165, 171, 59 S Ct 134, 137, wherein the Court declared, "A court does not have the power, by judicial fiat, to extend its jurisdiction over matter beyond the scope of the authority granted to it by its creators."

However, Judge Brett confidently created his own void authority in direct contravention of the settled intent of Congress for the Anti-Injunction Act, Title 28, U.S.C. Section 2283, which

provides,

"A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." (Emphasis added)

The narrow intent of the Act against subject matter injunctive jurisdiction and authority was settled in Vendo Co. v Lekro-Vend Co. (1977), 443 US 623, 631, 97 S Ct 2881, 2887, wherein the Court construed that,

"the Act is an absolute prohibition against any state-court proceeding, unless the injunction falls within one of the three specifically defined exceptions to the Act. The Act's purpose is to forestall the inevitable friction between the state and federal courts that ensues

from the injunction of state judicial proceeding by a federal court." (Emphasis added) See Oklahoma Packing Co. v Oklahoma Gas & Electric Co. (1940), 309 US 4, 9, 60 S Ct 215, 218, 84 LEd 447.

More specific to the issue is the narrow relitigation exception intent to the Act settled by the Court in Chick Kam Choo v Exxon (1988), 108 S Ct 1684, 1689-1690, by construing that,

"an essential prerequisite for applying the relitigation exception is that the claim or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court * * this prerequisite is strict and narrow." (Emphasis added)

The exceptional problem is that the select system does not concern itself with settled law and ousters of Article III

jurisdiction, but conceal the abuses.

If the actual claim had improperly sought to relitigate a formerly decided issue, Judge Brett would have no need to create his own relitigation claim and void jurisdictional exception to the Act, with necessary expectation of endorsement.

Such fiats and conclusory endorsements clearly abused Court's cited authorities and Federal Rules also serve to obstruct its appellate jurisdiction and writ review. former federal court litigation below,

4. The Federal Rules Abused.

The Court promulgated the Federal Rules and in Conley v Gibson (1957), 355 US 41, 47, 78 S Ct 99, 2 Led 2d 80, 85 stated that, "Following the simple guide of Rule 8(f) that 'all pleadings shall be construed as to do substantial

justice.' * * purpose is to facilitate a proper decision on the merits."

The accepted meaning of the substantial justice required of Rule 8(f) is to liberally construe a claim in favor of its pleader, and not unjustly and unfairly in favor of the opponent. See, Wright & Miller, Federal Practice and Procedure, Rule 8, pages 549-553, citing the apt Rule 8(f) reasoning of Bachman v. Seaboard Air Line R. Co. (D.C. S.C., 1948), 80 F.Supp. 976, at 979, that a court must,

"look to the substance of the entire pleading. It will not do to take the words used in one part of the complaint and considering them without reference to the complaint as a whole, to draw from them an inference favorable to the defendant's theory, which is opposed to the one deduced from a reading of the

whole complaint, and the one that the pleader evidently had in mind in framing it."

However, gross abuse of Rule 8(f) was the select means elected to circumvent the Act. Judge Brett deliberately mugged both liberally accepting AA's unfair pleadings to impose a vexations, but hypothetical claim favoring AA. Such Rule 8 abuse was central to creating the wholly void injunctive abuses, which were apparently rendered with expectations of a select white-wash. Ironically, "Due process requires a competent and impartial tribunal," (Emphasis added) Peters v. Kiff (1972), 407 US 493, 501, 92 S Ct 2163, 2168.

If a covert white-wash was not received, where the dissents to the conclusory decisions and chilling

sanction for frivolously opposing fiats and due process violations, while threatened with imprisonment for the effort? The Court's appellate jurisdiction and writ review of such burning questions of great nationwide importance are unfairly obstructed.

5. Protection of Due Processes and Appellate Jurisdiction.

It is respectfully urged that a writ of mandamus should direct the sound duties of the Court of Appeals and all of its judges render, en banc, cogent findings and reasoning in compliance with the intent of the Anti-Injunction Act, dictates against fraud, Federal Rules and Due Process Clause settled by the Supreme Court.

As above suggested, such direction would bring corrective attention to the record fiats and due process abuses and

appearance, or probability of the select means and covert tyrants within such Court. Such dominoe affects would be most fair and just.

In the alternative, a writ of mandamus is urged directing Thomas R. Brett, the United States District Judge below, to exercise his clear and peremptory duties to vacate the entirety of his March 31, 1992 Order and to dismiss the matter below in District Court Case No. C-762-C. Judge Brett's Order is reviewable from the record submitted in this matter.

Such writ relief will serve to bolster the Due Process Clause and protect the just machinery of the federal courts. At the same time, it will revitalize the Petitioner's property interests and due process rights, plus those of his former client.

The record of predisposed means for select partiality, abuse of settled law and obstructions of appeal rights, appellate jurisdiction and writ review squarely apply the appropriate principles commanding the issuance of writ relief, under the leading authority of Roche v. Evaporated Milk Ass'n (1943), 319 US 21, 25-26, 63 S Ct 938, 941, wherein, the Court declared that a writ of mandamus,

"extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Otherwise the appellate jurisdiction could be defeated * * by unauthorized action of the district court obstructing the appeal * * In determining what is appropriate we look to those principles which should guide judicial discretion in the use of an extraorinary remedy rather than to formal rules * * The

traditional use of the writ in aid of appellate jurisdiction * * has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." (Emphasis added)

Judge Brett caused the actual claim to vanish from the State Court, although it was empowered by cited authorities of the Court, plus Title 76, Oklahoma Statutes, Section 2, supra, and State Ex Rel. Burke v Oklahoma City, supra, 522 P2d, at 618-619.

The endorsed injunctive abuses granted prohibited fraud benefit. Such injunction was powerless, under the Anti-Injunction Act, 28 U.S.C. §2283, Federal Rules and Due Process Clause. It obstructed appeal rights and appellate jurisdiction. The conclusory decisions

rendered for the Court of Appeals, with appearances of covert abuse, obstruct writ review of the cause of the disappearing State Court claim and due processes.

Such obstructions apply the Court's dicta of Parr v. United States (1956), 351 US 513, 520, 75 S Ct 912, 917, that, "where appellate jurisdiction will be defeated if a writ does not issue." Such reasoning merges with the intent of the Anti-Injunction Act to avoid needless friction between state and federal courts, as construed in Vendo v. Lekro-Vend Co, supra.

Such Parr Court dicta was drawn from the writ reasoning of State of Maryland v. Soper, 270 US 9, 29-30, 46 SCt 185, 189, 70 Led 449, 456, 457, where closely analogous State Court interests were recognized by issued writ relief, as

follows.

"In the case before us * * the jurisdiction of the courts of a State to try offenses against its own laws and in violation of its own peace and dignity is wrested from it by the order of an inferior Federal Court. The state by its petition for mandamus became a suitor at the bar of this court to challenge the legality of the inferior court's action * * Except by the issue of mandamus, it is without an opportunity to invoke the decision of this court upon the issue it would raise."

CONCLUSION

Law and due process have little meaning, when selectively unapplied by a system in place within the federal court system. The root cause of this statement is based upon record facts, appearances and reasonable probabilities of unfair

predisposition.

It is indisputable that the State Court fraud claim was proper and immune under settled law. Shall nots became may. Plain usurpations of power caused such claim to disappear within an unlawful unconstitutional vacuum. Such district court abuses of settled law required confidence.

The exceptional probability is that 10 Circuit Judges were not permitted actual writ review. It is not reasonably conceivable that ten Circuit Judges would:

a. Refuse relief from the actual claim and due processes disappearing by fiats imposing and enjoining the substitute and appeal rights, with imprisonment threatened; and,

b. Refuse relief from the $40,333.01 appeal thwarting sanction imposed upon

Petitioner for sponsorship the different claim created by a fiat contravening settled shall nots; and,

c. Impose a $1,500 sanction on Petitioner for the seeking relief from clear abuses of settled law and due process as being frivolous, and

d. Join unexplained conclusions operating to endorse the muggings of due process and obstructions of appeal rights and appellate jurisdiction, while obstructing writ review.

Moreover, no dissent was made.

Such reasoning affirms the appearance and probability of an unfair and covert system being in place for the production of select white-washes by covert circuit tyrants. Absent such system, it is improbable that AA would have confidently urged abuses of settled law.

The State Court fraud claim did not only assert the discovered extrinsic injuries to Ms. Graham's rights. It exposed the unlawful means of the conspiracy of AA and others, including the FAA, to defraud rights and obstruct justice in federal court. Thus, the claim, its property interests and due process and appeal rights disappeared into a select vacuum, the cord to which appears to have been plugged in from within the Court of Appeals below.

Absent such select system in place, or its appearance, might the claim be secure? Of equal significance, might the wrongs not have commenced in 1985?

If, as it appears, the select are not to be inconvenienced by law, the proper function of Due Process Clause protections and dignity of Supreme Court authority are the ultimate targets.

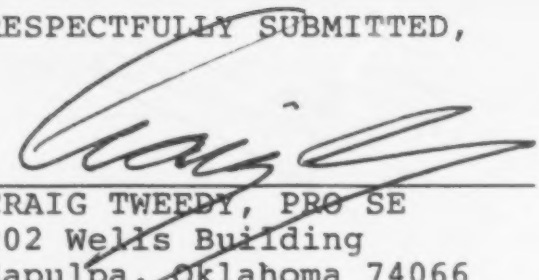
Notwithstanding such appearances, the clear fiats and conclusory decisions have materially obstructed and impeded the Supreme Court's appellate jurisdiction and writ review.

Such root causes provide exceptional due process demands for an appropriate writ of mandamus, with instructions. It is less important that abusive decisions frightened this Petitioner's former client, and have obstructed his right of appeal and threaten his property interests and imprisonment for bringing this Petition.

WHEREFORE, for the grounds and reasons of exceptional importance stated, this Petitioner, Craig Tweedy, respectfully, prays for the Supreme Court of the United States of America to issue the writ of mandamus deemed most

appropriate.

RESPECTFULLY SUBMITTED,



CRAIG TWEEDY, PRO SE
202 Wells Building
Sapulpa, Oklahoma 74066
918-224-2222
ATTORNEY AT LAW

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 1992, true and correct copies of the foregoing petition, and by appropriate number, were deposited in the U.S. Mails, with proper postage, and addressed to:

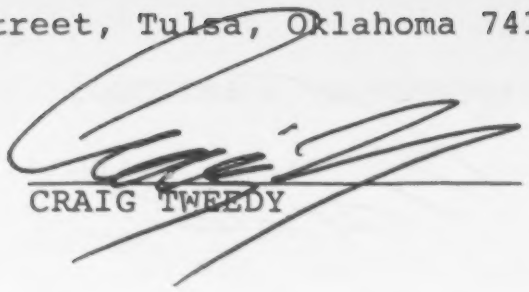
The United States Court of Appeals for the Tenth Circuit, % Robert L. Hoecker, Clerk, C404 United States Courthouse, 1929 Stout Street, Denver, Colorado 80294; and,

The United States District Judge for the Northern District of Oklahoma, Thomas R. Brett, Federal Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103; and,

Solicitor General, Department of Justice, Washington, D.C. 20530; and,

Reuben Davis and Frederick N. Schneider III, Attorneys for American Airlines, Inc., 500 Oneok Plaza, 100 West

Fifth Street, Tulsa, Oklahoma 74103.



CRAIG TWEEDY

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC.	)	FILED
Plaintiff,	)	Mar. 31, 1992
v.	)	
	)	No. 91-C-762-B
CRAIG TWEEDY and LILLIAN GRAHAM,	)	
Defendants.	)	

ORDER

This matter comes on for consideration of Plaintiff's American Airlines, Inc. (American), request for Preliminary and Permanent Injunctions.

Essentially, this is an action wherein American seeks to enjoin the Defendant, Lillian Graham (Graham), and her attorney, Defendant, Craig Tweedy (Tweedy), from seeking to litigate in a state court proceeding (or relitigate, as Plaintiff alleges) the issue whether or not Graham damaged a 4th stage turbine

disk (fn 1: part of an airplane engine) owned by a firm called "Ports of Call" while Graham was an employee of Plaintiff, serving in part as a basis of her discharge. The Court will herein recite the chronology of the Graham/Tweedy/American Airlines legal trilogy (Graham I, II & III).

Graham I

In May, 1986, Graham filed a two-claim Complaint against American in this federal district court, 86-C-516-C, alleging; (1) employment sex discrimination and sexual harassment under Title VII of the Civil Rights Act of 1964, 28 U.S.C. 2000e et seq. and, (2) a state tort claim for the alleged intentional infliction of emotional distress. In March, 1987, American was granted partial summary judgment on the intentional infliction of emotional

distress claim. On August 11, 1989, Judge H. Dale Cook of this court entered Findings of Fact (nos. 1-50) and Conclusions of Law, finding against Graham on her Title VII claim. The gist of the Court's findings and conclusions was that Graham did indeed "violate the work rules in question" and that "the preponderance of the evidence demonstrates that plaintiff's rule violations were the cause of her discharge."

The Graham I Court made the following findings, No. 30, which reads:

> 30. On June 7, 1985, Graham worked on a fourth stage turbine disk. She reported a dent to her supervisor. On June 24, 1985, plaintiff received a five day suspension without pay. Graham's grievance was denied on September 30, 1985. (Defendant's Exhibit 70). During trial, plaintiff attempted at length to demonstrate (1) the disk on which she was working belonged to American and was distinct from a disk belonging to Ports of Call, and (2)

> she did not damage the disk. The Court has concluded that the disk involved was the Ports of Call disk, and that plaintiff damaged it. Under questions from the Court, plaintiff's memory was unclear as to precisely what happened. (See Transcript, Vol. V, pp. 486-492). Plaintiff's daughter, Sandra Whiteis, testified at trial that her mother telephoned one day from work, admitting that plaintiff had damaged a turbine disk. Viewing also the testimony of various other eyewitnesses, the Court has concluded that the preponderance of the evidence lies in defendant's favor on this issue.

See, Graham v. American Airlines, Inc., 731 F.Supp. 1494 (N.D. Okl. 1989).

On September 11, 1989, Graham filed a Notice of Appeal and Docketing Statement, appealing the August 11, 1989 Judgment to the Tenth Circuit Court of Appeals. On August 7, 1990, Graham filed her Application to Withdraw Appeal and on August 10, 1990, the Court of Appeals dismissed the appeal.

On August 9, 1990, Graham filed a

Rule 60(b), Fed.R.Civ.P. Motion to Vacate the final judgment on grounds of newly discovered evidence and fraud. On November 21, 1990, while Graham's Motion to Vacate was pending, Graham filed a Supplemental Brief in which Graham asserted as a ground of fraud that the 1985 engine repair did not occur and that therefore the finding by the Court that Graham had damaged the disk was in error.

On December 13, 1990, the District Court entered an Order denying Graham's Motion to Vacate. On January 15, 1991, the District Court denied Graham's Motion for Reconsideration. On Fedruary 27, 1991, the Court denied Graham's Motion For Clarification. On March 18, 1991, the Court denied Graham's Motion To Reconsider the February 27th Order.

On April 5, 1991, Graham filed an appeal from the denial of the Rule 60(b)

Motion. On December 23, 1991, Graham filed her Brief in Chief. American's brief was not due until February 5, 1992. On January 17, 1992, Graham filed a Motion Dismissing the appeal of the denial of the Rule 60(b) motion.

Graham II

On September 8, 1989, approximately 4 weeks after this federal district court entered its findings and conclusions in Graham I, and three days before she filed her Notice of Appeal in Graham I, Graham commenced, through the efforts of Defendant Attorney Craig Tweedy, a second action in state court (now known as Graham II), which American removed to federal Court, being assigned Case No. 89-C-815-P. On June 13, 1990 this Court granted Graham leave to file an Amended Complaint.

In Graham II, Graham alleged in the

Petition that the judgment in Graham I was the result of engine record fraud, perjury by American's witnesses and conspiracy between American, its agents and employee, George Barton, and Graham's union, the Transport Workers Union, and its agent, Dennis Quish, to deprive Graham through fraud and deceit of her employment with American.

On February 21, 1991, Judge Layn R. Phillips of this court entered summary judgment in favor of American and the other Defendants in Graham II on, among other grounds, claim and issue preclusion. Judge Phillips, in his Order, stated:

> "During the course of litigation in Graham #1 plaintiff repeatedly raised the same allegations of fraud, altered or concealed evidence and perjury which she now asserts as the basis of her claims in Graham # 2."
>
> * * * * *
>
> ". . .those "facts" were previously

raised by plaintiff and disposed of by the court in Graham # 1 . . ."

* * * * *

". . . plaintiff's papers filed in Graham # 1 consider(ed) and dispos(ed) of the same allegations that plaintiff now asserts as the basis of her claims in Graham # 2."

In Graham II, Defendants moved for summary judgment of four alternative grounds: (1) That Graham II was an impermissible collateral attack on the Graham I judgment; (2) That Graham II was barred by the doctrines of res judicata and collateral estoppel; (3) That each of Plaintiff's four claims in Graham II is legally insufficient; and (4) That Plaintiff's claims for breach of contract/breach of duty of fair representation are barred by a six month statute of limitations. The Graham II Order stated:

"The court believes summary judgment is warranted in this case on all of the alternative grounds set forth

> in defendants' motion and brief. However, for the purposes of this order the court concludes it is unnecessary to base its decision on each of the alternative grounds because this action is an impermissible collateral attack on the prior judgment in Graham # 1, and further because the claims raised in this action either were, or could have been, raised in Graham # 1 and therefore are barred by the doctrines of res judicate (claim preclusion).
>
> Plaintiff's two response briefs, although replete with allegations of lying, cheating and concealing evidence, are woefully inadequate in responding to defendants' legal arguments."

The Graham II Order, relying upon Travlers Indem. Co. v. Gore, 761 F.2d 1549, (11th Cir. 1985), held that Graham could not relitigate the issues of intrinsic fraud, perjury and forging or altering evidence, decided against Graham in Graham I. The Court further held that relief from intrinsic fraud must be made by direct attack in the same case in which the fraud was allegedly committed,

and a party cannot use an independent action as a vehicle to relitigate issues. The Graham II Order further stated that allegations of perjury, forged and altered documents and concealed evidence raise issues of intrinsic fraud, citing Wood v. McEwen, 644 F.2d 797, 801, (9th Cir. 1981) cert.den. 455 U.S. 942, which, "to lay a foundation for an independent action, (it) must be such that it was not an issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party.", citing Travelers, supra, at 1552. The Court further concluded that perjury by a party does not meet that standard.

Judge Phillips, distinguishing the similar but separate doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion),

held that these doctrines bar Graham II.

Graham did not appeal the February 21, 1991, Graham II Order and Judgment.

Graham III

On September 10, 1991, Graham filed, again through the efforts of Defendant Attorney Tweedy, in Tulsa County, Oklahoma District Court yet another action (Graham III) against American, (fn 2: George Barton, Buck Williams and Wayne Ping, Agent for United Transport Workers Union of America are also defendants in Graham III.) CJ-91-4125. On September 27, 1991, American filed this action (Graham IV) seeking to enjoin Graham and Tweedy from proceeding in the state court action, which has been stayed, pending a ruling by this Court, by Order of the state District Judge.

In Graham III, Graham alleges that American and its agent and its employee,

George Barton, Graham's supervisor, and Buck Williams, Graham's crew chief, and Graham's union, the TWU, and its agent, Wayne Ping, committed fraud against Graham in Graham I and Graham II when American and the other Defendants "fraudulently represented" that Graham damaged the Ports of Call 4th stage turbine disk in 1985 and "fraudulently concealed" the fact that the disk had been overhauled in 1982 and not in 1985.

On January 13, and 15, 1992, this Court held evidentiary hearings on American's Motion for a Preliminary and Permanent Injunction. Through witnesses Dennis Quish and George Barton, American again established and proved that on June 7, 1985, Graham damaged the 4th stage turbine disk 9B6198 removed from an engine owned by Ports of Call, as found in Judge H. Dale Cook's Findings of Facts

30, 32 and 46 entered in Graham I.

This issue is the same issue Graham seeks to again litigate in the pending state court action, an impermissible effort. Travelers, supra. Relief from fraud must be made by direct attack in the same case in which the fraud was committed and a party cannot use an independent action for relief from judgment as a vehicle for the relitigation of issues. Id.

Graham has repeatedly raised in Graham I and Graham II allegations of fraud, altered or concealed evidence and perjury which is now asserted by Graham in Graham III. Judges Cook and Phillips considered and rejected these same claims and issues, now final, upon which Graham has predicated the pending state court action.

The terms res judicate (claim

preclusion) and collateral estoppel (issue preclusion), are related but distinct doctrines. Lujan v. United States Dept. of the Interior, 673 F.2d 1165 (10th Cir. 1982) cert.den. 459 U.S. 969, rehearing denied 459 U.S. 1229. Unless prevented by special circumstances, a plaintiff should raise all of the theories, state and federal, available to her or him in the same lawsuit. Ruple v. City of Vermillion, S.D., 714 F.2d 860 (8th Cir. 1983) cert.den. 465 U.S. 1029. Failure to so do results in claim preclusion and bars relitigation. Rulpe, supra.

Graham argues that the Cromwell principles (fn 3: Cromwell v. County of Sac, 94 U.S. 351 (1876).) relating to the effect of judgments, as quoted in In Re Four Seasons Securities Laws Litigation, 370 F. Supp. 219 (W.D. Okl., 1974),

controls the instant matter. The Court disagrees. The very language from Four Seasons, Quoting Cromwell, set forth by Graham in her pleadings, militates against her cause, as follows:

> " . . . there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action."
>
> " . . . where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." (emphasis added by Graham).

As stated, infra, Graham III presents the same claims and issues as decided in Graham I and Graham II, not different claims and issues.

Graham further argues that the

Anti-Injunction Act, 28 U.S.C. § 2283, prevents this Court from granting American the injunctive relief sought herein. That section provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

American counterpoints that the "relitigation" exception to the Anti-Injunction Act provided ample case precedent for the relief sought herein by American.

To begin with, § 2283 applies to restraints on private parties as well as those imposed directly on a state court. Henry v. First Nat. Bank of Clarksdale, 595 F.2d 291 (5th Cir. 1979), rehearing denied 601 F.2d 586, cert.den. 444 U.S. 1074. In actual application, state/federal comity dictates that

federal courts should, if warranted, enjoin the parties rather than the state court or judges where an injunction against the litigants will accomplish the same purpose. Federal Home Loan Bank Bd. v. Court of Common Pleas, 510 F.Supp. 40 (D.C.Ohio, 1981).

The relitigation exception to § 2283 is appropriate and traditionally used in the case of baseless and vexations state court proceedings. Browning Debenture Holders' Committee v. DASA Corp., 454 F.Supp. 88, (D.C.N.Y.1978), affirmed 605 F.2d 35. However, in determining its applicability, the federal court's judgment is presumably far more threatened if the state proceeding, as in the present case, involves the same issues rather than if it involves only issues that could have been, but were not raised. Delta Air

Lines, Inc. v. McCoy Restaurants, Inc., 708 F.2d 582 (5th Cir.1983).

The relitigation exception to the Anti-Injunction Act is applicable when the federal judgment is claim preclusive or issue preclusive, if the federal court, as in the matter sub judice, has actually decided the claims or issues which a federal injunction would insulate from state proceedings. Nationwide Mut. Ins. Co. v. Burke, 897 F.2d 734 (4th Cir. 1990). The central prerequisite for applying the relitigation exception to the Anti-Injunction Act is that claims or issues which the federal injunction insulates from litigation in state court proceedings actually have been decided by the federal court. Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed.2d 127, (1988). Such prerequisite is strict and narrow,

requiring an assessment of the precise state of the record and of what the earlier federal order(s) actually said, and does not permit post hoc judgment as to what the order(s) intended to say. Id.

In this matter, the Court concludes the gravamen of Graham's pending state court proceeding is that the repair of, and therefore the damage to, the 4th stage turbine disk of the Ports of Call engine occurred in 1982 and could not have occurred in 1985 as found by Judge Cook in Graham I. This Court concludes, from the evidentiary hearing and the present pleadings, and also the pleadings of Graham I (including the record), Graham II and Graham III, that this is the precise issue around which the various allegations of fraud, perjury and record forging are layered. The Court futher concludes that Graham's claims and

issues in Graham III are barred by the doctrines of res judicata and collateral estoppel from Graham I and II.

The Court concludes that Defendants Craig Tweedy and Lillian Graham should be and each are herewith enjoined from proceeding further in the state court proceeding styled Lillian A. Graham v. American Airlines, Inc., George Barton, Buck Williams and Wayne Ping, Agent for United Transport Workers Union of America, CJ-91-4125, D.C. Tulsa County, State of Oklahoma. These Defendants are further enjoined from instigating, against American and those parties in privy thereto to the claims and issues herein, any further action or proceeding, in either state or federal court or any court or administrative tribunal, on these same claims and/or issues. Any violation of the Court's injunction by

either Defendant will subject the violator to appropriate sanctions.

The Court next considers American's request for the imposition of sanctions pursuant to 28 U.S.C. §1927 resulting from these Defendants' actions in bringing Graham III. The Court views the pending state court proceeding as essentially vexatious and baseless, the issues therein having been resolved against Graham in Graham I and Graham II. Part of the Court's view is shaped by the fact the Graham, while strongly protesting alleged wrongs committed against her at the hands of American and others, has never completed an appeal of the adverse decisions in either Graham I and Graham II to the Tenth Circuit Court of Appeals.

Graham did file a Notice of Appeal in Graham I, opting to withdraw the

appeal and pursue a Rule 60 motion to vacate the judgment in Graham I. In Graham II, Graham filed no Notice of Appeal. It occurs to the Court that a party litigant who alleges such deliberate maligning and intrigue being practiced upon her would surely sound out her grievances in a higher court, having achieved no satisfactory results at the District level. Further, it is obvious that Graham is not intimidated by the prospect of more litigation, which sometimes chills a litigant's appeal decision.

Three different District Judges, including the undersigned, have considered issues and claims in this ongoing repetitive saga. Despite the multiplicity of suits and judges the decision against Graham is essentially the same on the overall issue, i.e. that

Graham was discharged from American for unsatisfactory job performance and not because of sexual discrimination. One lawsuit to pursue har alleged rights was appropriate. Two lawsuits are inappropriate. Three lawsuits are clearly vexatious.

The Court concludes sanctions pursuant to 28 U.S.C. §'1927, could not properly be imposed against Defendant Lillian Graham, a non-attorney. Damiani v. Adams, 657 F.Supp. 1409, (S.C.Cal 1987); Chrysler Corp. v. Lakeshore Commercial Finance Corp., 389 F.Supp. 1216, (D.C.Wis.1975) affirmed 549 F.2d 804. However, sanctions may be imposed against counsel, where appropriate. The Court concludes Graham III was and is a baseless, unreasonable and vexatious proceeding which should not have been filed. The Court further concludes that

Defendant Craig Tweedy should be and he is required by the Court to satisfy personally the excess costs, expenses, and attorneys fees reasonably incurred in this action because of his conduct in initiating and prosecuting Graham III (fn 4: Any award of costs, fees or other expenses against Defendant Attorney Tweedy and/Defendant Lillian Graham in the state court action, if appropriate, is a matter for consideration by the state court.), which required American to seek injunctive relief in the present action. (fn 5: The Court notes Defendant Attorney Tweedy has an historical penchant for vexatious relitigation for which he has been previously, personally sanctioned. See, The Burggraf Corporation v. Goodyear Tire and Rubber, Inc., Northern District of Oklahoma, Case No. 82-C-1177-B, United States Court of

Appeals for the Tenth Circuit Case No. 90-5091; Sooner Products v. McBride, Northern District of Oklahoma, Case No. 81-C-31-B, United States Court of Appeals for the Tenth Circuit Case No. 85-1003. See attached Orders and Judgments.)

The parties shall adhere to the following schedule:

By April 10, 1992, Plaintiff shall filed its statement of excess costs, expenses and attorneys fees reasonably incurred herein.

By April 20, 1992 Defendant Attorney Tweedy shall file his response thereto.

A hearing on the excess costs, expenses and attorneys fees is set before Magistrate Judge Jeffrey Wolfe on April 28, 1992, at 9:30 a.m.

IT IS SO ORDERED this 31st day of

March, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CRAIG TWEEDY and LILLIAN A. GRAHAM,	)	FILED
Petitioners,	)	Jun. 15, 1992
v.	)	No. 92-5107
THOMAS R. BRETT, United States District Judge,	)	
Respondent.	)	

ORDER

Before LOGAN, ANDERSON, and EBEL, Circuit Judges

This is an original proceeding in the nature of mandamus. Petitioners seek an order compelling the Honorable Thomas R. Brett to vacate his order of March 31, 1992, in case No. 91-C-762-B in the United States District Court for the Northern District of Oklahoma. Petitioners have not satisfied the requirements for invoking mandamus relief. Mallard v. United States Dist. Court, 490 U.S. 296, 308-09 (1989);

Storage Technology Corp. v. United States Dist. Court, 934 F.2d 244, 246-47 (10th Cir. 1991. Consequently, the petition is denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CRAIG TWEEDY and LILLIAN A. GRAHAM,	)	FILED
Petitioners,	)	Sep. 14, 1992
v.	)	No.92-5107
THOMAS R. BRETT, United States District Judge,	)	
Respondent,	)	
AMERICAN AIRLINES, INC.,	)	
Real Party in Interest.	)	

ORDER

Before McKAY, Chief Judge, LOGAN, SEYMOUR, MOORE, ANDERSON, TACHA, BALDOCK, BRORBY, EBEL, and KELLY, Circuit Judges.

This matter is before the court on Lillian A. Graham's and Craig Tweedy's petition for rehearing with suggestion for rehearing en banc. The motion for rehearing follows this court's denial of their Petition For Writ of Mandamus.

The materials submitted by Petitioners have been reviewed by the

members of the hearing panel, who conclude that the original disposition was correct. Accordingly, Petitioners' Application to File A Supplement to The Petition For Rehearing is granted. The petition is denied on the merits. No member of the hearing panel and no judge in regular active service on the court having requested that the court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

Appendix D

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CRAIG TWEEDY and LILLIAN A. GRAHAM,	)	
Petitioners,	)	FILED
v.	)	SEP. 14, 1992
THOMAS R. BRETT, United States District Judge,	)	No. 92-5107
Respondent,	)	
AMERICAN AIRLINES, INC.,	)	
Real Party in Interest	)	

ORDER

Before LOGAN, ANDERSON, and EBEL, Circuit Judges

This matter is before the court on American Airline's Motion for Sanctions. The Real Party In Interest seeks sanctions against Petitioners Craig Tweedy and Lillian A. Graham for filing a frivolous Petition For Writ of Mandamus. The airline seeks sanctions in the form of attorney's fees, fines, filing

restrictions and, against Petitioner Tweedy, disciplinary action. The court has carefully considered the motion, as well as Petitioners' response. We grant Respondent's motion with regard to attorney Tweedy, and impose sanctions against him in the amount of $1,500.00.

Any attorney who, in the court's determination, "so multiplies the proceedings in any case unreasonably and vexatiously may be required . . . to personally satisfy the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. The mandamus petition which Mr. Tweedy filed was frivolous, as was the petition for rehearing following it. Neither pleading was supported in law or fact. In light of the history of the litigation between these parties, we hold that these

pleadings warrant sanctions against Mr. Tweedy under § 1927.

In addition, although the court has limited the sanction to a monetary penalty, Petitioner Tweedy should be aware that his conduct is of great concern to the court. Further frivolous pleadings will not be tolerated and will warrant additional sanctions, including disciplinary action.

The Motion for Sanctions is granted as it pertains to Petitioner Craig R. Tweedy. He shall remit $1,500.00 to Real Party In Interest American Airlines as a monetary penalty. Payment shall be made within sixty days of the date of this order. The motion is denied with respect to Petitioner Lillian A. Graham.

Entered for the Court

ROBERT L. HOECKER, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CRAIG TWEEDY and LILLIAN GRAHAM,	)	Filed May 18, 1992
Petitioners,	)	
vs.	)	No. 92-5107
HONORABLE THOMAS R. BRETT, UNITED STATES DISTRICT JUDGE,	)	
Respondent.	)	

PETITION FOR WRIT OF MANDAMUS

The Petitioners, Craig Tweedy and Lillian Graham, pursuant to 28 U.S.C. §1651 and Rule 21, Federal Rules of Appellate Procedure, respectfully petition this Court to issue a writ of mandamus to the Honorable Thomas R. Brett, United States District Judge for the Northern District of Oklahoma, directing him to confine his exercises of jurisdiction and authority within the accepted and unambiguous constraints

of the Anti-Injunction Act, 28 U.S.C. §2283, the Federal Rules of Civil Procedure and Due Process Clause, and, accordingly, to exercise his plainly defined and peremptory duties to vacate his Order of March 31, 1992 by reason of the plainly wrong and arbitrary usurpations of power exercised to arbitrarily misconstrue and edit the proper independent State Court extrinsic fraud claim, clearly immune under the Anti-Injunction Act, and create a void claim relitigation exception to the Anti-Injunction Act, and violate the Petitioners' due process rights by enjoining them from litigating a claim materially different than pled by them, and by imposing an appeal thwarting and unfair sanction, without prior notice, for being vexatious. Said Order of March 31, 1992 (Exhibit "A") was entered in

lower Court Case No. 91-C-762-B.

The Petitioners' April 10, 1992 Motions for Reconsideration (Exhibit "B") was denied by the May 21, 1992 Order for failure of "substantial reasons" urged (Exhibit "C"), but remains pending for reconsideration by virtue of a Second Rule 59 Motion of May 27, 1992 (Exhibit "D") reurging those substantial reasons unrecognized or avoided by the Respondent.

NATURE OF PROCEEDING BELOW

1. The Plaintiff below, American Airlines, Inc. ("AA"), brought its September 27, 1991 Complaint, with Brief in Support (AA Brief, Exhibit "E"), urging an injunction against Ms. Graham's independent State Court tort action in which AA is a State Court Co-Defendant. The Complaint named as Defendants: Lillian Graham, the State Court

Plaintiff, and Craig Tweedy, her attorney, the Petitioners herein.

2. The independent State Court action (Exhibit "F") was filed on September 10, 1991 in the District Court of Tulsa County, State of Oklahoma.

Such action, at ¶¶3-5, asserts a single tort claim. Such claim asserts the discovered sole wrong of the extrinsic fraud of AA's 1985 overhaul of Engine S/N 644980. It asserts the discovery that such engine was not overhauled in 1985, but was last overhauled by AA in 1982. It alleges that Ms. Graham had formerly accepted and relied upon the State Court Defendant's representations of the 1985 engine overhaul, but knows she did not work on a part from such engine.

It states that the discovery arose only because of a mid-1990 U.S. DOT

criminal investigation of the FAA, including FAA and AA misconduct in formal deposition discovery, issued by the Court below, seeking to secure those actual and complete 1985 engine records required for the engine release under the Federal Air Regulations ("FARs").

3. Ms. Graham had been terminated in October, 1985 as an AA aircraft mechanic on disciplinary grounds, including the charge of her purported June, 1985 work damage to turbine disc S/N 9B6198 removed from Engine S/N 644980 during the engine overhaul purported by AA's FAR required safety records (Exhibit "F", State Court Action, ¶ 4).

4. It is undisputed that the fact or fraud of such 1985 engine overhaul was not an issue decided by the Court below in Graham I & II judgments, adverse to Ms. Graham. The material fact of such

independent claim's immunity from injunction under the Anti-Injunction Act, 28 U.S.C. §2283, is tacitly conceded by AA's injunctive brief (Exhibit "E"). AA's brief carefully avoids mention of the 1985 engine overhaul and/or such extrinsic fraud pretext, while vaguely contending that the independent fraud claim seeks to improperly relitigate unspecified issues decided in Graham I & II.

5. The actual independent State Court fraud claim could not be enjoined under the narrowly construed intent of the relitigation exception to the Anti-Injunction Act, 28 U.S.C. §2283, because it did not seek to relitigate an issue actually decided by the Court below. The Act absolutely denied to Respondent the subject matter jurisdiction and authority to enjoin the

actual independent State Court fraud claim, or these Petitioners.

6. The right of the independent fraud claim is likewise empowered, under settled law, to allege and prove the extrinsic fraud of such 1985 engine overhaul and, thereby, deny to AA and others the benefit of such material fraud in former litigation and against Ms. Graham's rights. Such actual independent claim does not seek, nor need, to relitigate the disc charge or other issues decided in Graham I & II. Nor does it seek to invalidiate the Graham I & II judgments. The non-existence of the 1985 engine overhaul would prove damages to her rights, i.e., the impossibility of her 1985 work on such disc part and the false testimony and forged records exercised in the unlawful plan of extrinsic fraud to injure her

rights, motivated by a major and collateral purpose.

7. The Respondent did not enjoin the immune and actual independent State Court fraud claim. Such actual claim and the Petitioners rights unlawfully and unconstitutionally disappeared by the judicial fiats of the Order of March 31, 1992 (Exhibit "A"). The Respondent abused the substantial justice requirement of Rule 8(f), F.R.Civ.P., by plainly misconstruing the actual independent fraud claim before a different Court. The Respondent clearly did not exercise his duty to liberally construe such claim in Ms. Graham's favor, or to recognize the empowered nature of such independent claim. Following American's unfair lead, the Respondent avoided mention of the discovered wrong of the extrinsic

and material 1985 engine overhaul fraud basing the actual claim. The Respondent arbitrarily reversed the proper damage affects of such extrinsic fraud claim into a different claim unfairly favoring AA, as one improperly seeking to relitigate the 1985 disc damage issue decided in Graham I.

In so doing, the Respondent (Exhibit "A", pp. 1, 7, 10 & 12) arbitrarily excised and separated the words; "fraudulently represented" * "fraudulently concealed" and "disc", from their proper context in describing the extrinsic 1985 engine overhaul fraud. Thus, the Respondent usurped and abused authority, unconferred by the Federal Rules, to create a void claim relitigation exception to the Anti-Injunction Act. With such appearance of authority under the

Anti-Injunction Act, the Respondent oppressively enjoined Petitioners from litigating a vexatious, but judicially created claim, which was materially different than the claim pled and intended by them.

8. The words unfairly and arbitrarily excised and separated by the Respondent from their meaning in the actual claim to judicially create the new and vexatious claim are underlined in ¶¶4-5 of such actual fraud claim (Exhibit "F"), quoted in pertinent part, as follows,

"4. Commencing in June of 1985, the Defendants acted * * to fraudulently conceal from Ms. Graham the material fact that the Pratt & Whitney JT3 jet engine under S/N 644980 had last been overhauled in 1982, and the material fact that said engine was not overhauled in 1985, and

the material fact that its turbine disc under S/N 9B6198 was removed, damaged, and scrapped and not reinstalled in said engine after the last overhaul of American's two back-to-back 1982 overhauls of said engine, and Defendants fraudulently represented that said engine was overhauled by American in 1985 for the intent and purpose of inducing Ms. Graham to accept, rely and act upon such underlying fact pretext and to wrongfully and maliciously injure Ms. Graham and her rights. In support of such 1985 engine overhaul pretext, the Defendants generated personnel and maintenance records and charges to show Ms. Graham's work on said disc during the purported 1985 overhaul of said engine, and the Defendants have actively concealed the underlying fraud of the 1985 engine overhaul pretext in a continuous and

uninterrupted manner, and such fraudulent concealment required and has received the active concert of others, including the FAA. * * *

5. Ms. Graham knew that she had not worked on a disc removed from said engine in 1985, but accepted, relied upon and acted in good faith upon Defendants representations of the underlying 1985 engine overhaul, all to her considerable personal, emotional and economic detriment. Ms. Graham progressively challenged the validity of the maintenance records produced by the Defendants for said 1985 engine overhaul and exercised due diligence to locate and secure the actual records for the 1985 engine overhaul, until November-December, 1990 * *"

9. Without providing prior notice and fair opportunity to defend, the

Respondent unfairly imposed sanctions (Exhibit "A", pp. 12-13) against Craig Tweedy for defending himself, his Co-Petitioner/client and the actual claim from an injunction prohibited by the Anti-Injunction Act. The actual sanction ground was that Craig Tweedy had pursued an improper and vexatious claim, i.e., the claim arbitrarily created by the Respondent. Craig Tweedy had prior notice only that AA's brief (Exhibit "E", pp. 18-20), had exclusively urged a different sanction from the Court below for the recovery of AA's costs and attorney fees expended in defending the actual claim in State Court. Craig Tweedy's due process rights were clearly violated. Moreover, such unfair sanction from the partial Respondent shows a threatened design to be assessed and enforced in a manner economically

thwarting an appeal from the wholly void Order of March 31, 1992 and due process deprivations.

10. A Motion for Reconsideration was timely filed on April 10, 1992 (Exhibit "B") urging the Respondent's multiple duties to vacate the Order of March 31, 1992. It challenged the Respondent's unfair predisposition of bias behind the plainly wrong and void claim relitigation exception to the Anti-Injunction Act, created by abusing Rule 8(f) to favor the State Court Defendant by arbitrarily adopting AA's distortive pleading for the independent State Court claim. It showed due process deprivations of these Petitioner/Defendants being enjoined, in a vacuum, from litigating a void claim not pled or intended by them, plus the cost sanction for vexatious relitigation.

It showed the Respondent's strong partiality and failure of duty by arbitrarily providing AA with the prohibited benefit of extrinsic and material fraud against such Court and Ms. Graham's rights, i.e., the accepted purpose for the independent action made to unlawfully and unconstitutionally disappear.

11. By the Order of May 21, 1992 (Exhibit "D"), the Respondent ruled that "no substantial reasons" existed to impose the Court's duty to reconsider and vacate the Order of March 31, 1992. Such ruling, as with the injunctive Order, is so plainly wrong that it confirms an unfair partiality and Respondent's refusal to comprehend or be guided by the unambiguous and settled provisions of independent actions, the Federal Rules, Anti-Injunction Act and the Due Process

Clause.

12. Accordingly, a second Motion for Reconsideration was filed on May 27, 1992 (Exhibit "G") reurging the Respondent's duty to reconsideration of the substantial reasons and grounds avoided by the Order of May 21, 1992 and reurging by the April 10, 1992 Motion for Reconsideration.

13. These facts and record exhibits show the Petitioners clear and indisputable right and immediate need for the issuance of extraordinary writ relief from the real, immediate and irreparable harm from the due process violations. The powerless injunction was arbitrarily created by the Respondent's usurpations of jurisdiction and authority to circumvent the constraints of the Anti-Injunction Act and authorities empowering the actual independent claim.

The Respondent has refused to recognize and act upon his clear and indisputable peremptory duties to vacate the powerless, unlawful and unconstitutional Order of March 31, 1992. Of equal significance, the Respondent has evidenced an unfair predisposition to favor AA and assess and enforce oppressive cost and attorney fees, under the imposed sanction, in a manner operable to unjustly thwart the right of appeal being heard by this Court.

14. The Court is urged to grant a stay of further proceedings in the matter below, pending this Court's decisions on this Petition.

STATEMENT OF ISSUES

The issues involved are:

1. Did the Respondent have a peremptory duty to confine his judicial functions within the accepted constraints

of jurisdiction and authority arising from the Anti-Injunction Act, Federal Rules and Due Process Clause?

2. Does the Respondent have a plainly defined and peremptory duty to vacate the plain usurpations of subject matter jurisdiction and authority exercised to create a void claim relitigation exception to the Anti-Injunction Act by unjustly editing the actual and immune claim to impose a claim favoring AA, and the due process violations arising from from the Petitioners being enjoined from litigating a claim materially different than pled by them in the State Court?

3. Did a due process violation arise from the sanction unfairly imposed, without prior notice, for filing and defending a claim arbitrarily created and imposed by judicial fiat and, likewise,

show the Respondent's predisposition to assess and enforce the costs and attorney fees sanction in a manner tending to thwart a right of appeal being heard by this Court?

STATEMENT OF REASONS WHY

WRIT SHOULD ISSUE

1. This Court has jurisdiction to issue the Extraordinary Writ of Mandamus prayed for under the "All Writs Statute," 28 U.S.C. §1651.

2. Substantial damage to the Petitioners and their rights is real and immediate by virtue of the Respondent's usurpations of jurisdiction and authority and the resulting due process deprivations, void injunction and appeal thwarting sanction and pending assessment and enforcement of cost and attorney fees.

3. The delay required by an appeal

is not warranted, under the these extraordinary circumstances, and additional irreparable harm and injury to these Petitioners would result, if required to pursue and wait for a normal appellate review, which appeal the sanction offers to obstruct or thwart.

4. The Writ may and should issue "to confine an inferior court to a lawful exercise of its jurisdiction or to compel it to exercise its authority when it is its duty to do so." Johnson v. Rogers (CA 10, 1990), 917 F2d 1283, at 1284; Roche v. Evaporated Milk Ass'n (1943), 319 U.S. 21, 26, 63 S.Ct. 938, 941. When there is "a clear right to the relief sought, a plainly defined and peremptory duty on the part of respondent to do the action in question, and no other adequate remedy available." Johnson v. Rogers, supra, 917 F2d, at 1285. When the

judicial action is "so plainly wrong as to indicate failure to comprehend or refusal to be guided by unambiguous provisions of a statute or settled common law doctrine * * Beyond this, * * arbitrary action, usurpation of power or obvious disregard of the law." American Airlines v. Foman (CA 3, 1953), 204 F2d 230, at 232-233.

5. The Respondent disregarded his peremptory duty to recognize the principles and authorities empowering independent actions against extrinsic fraud, in this matter,) to deny the benefits of the extrinsic 1985 engine overhaul fraud, without seeking to relitigate an issue decided in the Court below or to invalidate such judgments. Chisholm v. House (CA 10, 1947), 160 F2d 632, at 643; Hood v. Hood (CA 10, 1964), 335 F2d 585, at 589-591;

1B Moore's Federal Practice, ¶0.407, pages 284-285.

6. The Respondent had a plainly defined and peremptory duty to recognize his failure of authority and subject matter jurisdiction to grant an injunction. The independent State Court fraud claim did not seek, nor need to relitigate an issue decided by the Court below and was immune under the Anti-Injunction Act, 28 U.S.C. §2283. The intent of the Act created "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court. Moreover, * * this prerequisite is strict and narrow." (Emphasis added) Chick Kam Choo v. Exxon Corp (1988), 108 S.Ct. 1684,

1690. The Respondent's duty was to "narrowly construe the Act's three exceptions" and "resolve doubts" against an injunction. Brooks v. Barbour Energy Corp (CA 10, 1986), 804 F2d 1144, 1146. Without such narrow exception, "the Act is an absolute prohibition to any injunction of any state-court proceeding." Vendo Co. v. Lekro-Vend Corp (1977), 533 US 623, 631, 97 S.Ct. 2281, at 2887.

7. The Respondent circumvented the settled law expressed in ¶¶5-6 and created his own injunctive jurisdiction, i.e., an arbitrary claim relitigation exception to the Act, but has refused to act on his plainly defined and peremptory duty to vacate such void mechanism and due process violations. By such mechanism, the Respondent avoided his peremptory duty to "liberally construe"

the actual claim with substantial justice, under Rule 8(f), F.R.Civ.P. and to not unfairly edit words to create a claim favoring the opponents. Misco Leasing, Inc. v. Keller (CA 10, 1973), 490 F2d 545, 548; Gulf Coast Western Oil Co. v. Trapp (CA 10, 1947), 165 F2d 343, 347; Wright & Miller, Federal Practice and Procedure, Rule 8, §1286, pages 549-553, citing the apt reasoning of Bachman v. Seaboard Air Line R. Co. (D.C. S.C., 1948), 80 F.Supp. 976, at 979, that in construing a pleading, the Court must,

"look to the substance of the entire pleading. It will not do to take the words used in one part of the complaint and, by separating them from the context and considering them without reference to the complaint as a whole, to draw from them an inference favorable to the defendant's theory, which is opposed to

the one deduced from a reading of the whole complaint, and the one that the pleader evidently had in mind in framing it."

8. The actual claim and Petitioners rights unlawfully and unconstitutionally disappeared. Moreover, the Respondent has refused to recognize his peremptory duty to vacate the injunction as being void for three substantive reasons, "for lack of subject matter jurisdiction * * plain usurpations of power * * court has acted in a manner inconsistent with due process of law." V.T.A. v. Airco, Inc. (CA 10, 1979), 597 F2d 220, at 224-225. "The due process rights to a competent and impartial tribunal is quite separate from the right to any particular form of proceeding." Peters v. Kiff (1972), 407 U.S. 493, 501, 92 S.Ct. 2163, 2168. The "neutrality requirement" of

the Due Process Clause operates to "guarantee that * * property will not be taken on the basis of erroneous or distorted conception of the facts or the law * * preserves both the appearance and reality of fairness * * by assuring that * * the arbiter is not predisposed to find against him." (Emphasis added) Marshall v. Jerrico (1990), 446 U.S. 238, 100 S.Ct. 1610, at 1613.

9. The Writ should issue when an, "unauthorized action * * has thwarted or tends to thwart appellate review of the ruling." Roch v. Evaporated Milk, supra, 319 U.S. at 25-26, 63 S.Ct. at 941. The appeal thwarting sanction was unfairly imposed without prior notice for filing a vexatious claim, which was arbitrarily created by Respondent, whereas the actual independent action filed was founded upon discovered fact

and above cited authorities of this Court. The imposing of a sanction upon an attorney without "notice and opportunity to be heard" would violate his rights. Braley v. Campbell (CA 10, 1987), 832 F2d 1504, at 1514.

WHEREFORE, these Petitioners pray that an order staying proceedings in the matter below during the pendency of this matter, and that this Court issue a writ of mandamus to the Honorable Thomas R. Brett, United States Judge for the Northern District of Oklahoma, directing him to vacate the Order of March 31, 1992 for the reasons and grounds stated herein, and further directing that the injunctive complaint be dismissed, plus the grant to Petitioners of such other relief as deemed proper.

RESPECTFULLY SUBMITTED,

s/Craig Tweedy
CRAIG TWEEDY, OBA # 9145,
PRO SE
202 Wells Building
Sapulpa, Ok 74066
918-224-2222
ATTORNEY FOR CO-PETITIONER
LILLIAN GRAHAM

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 1992 a true copy of the foregoing petition was personally delivered to the clerical staff of the Honorable Thomas R. Brett at the Office of the Clerk for the United States District Court for the Northern District of Oklahoma, United States Courthouse, Tulsa, OK 74103 and to the offices of Reuben Davis and Frederic N. Schneider, III, of BOONE, SMITH, DAVIS, HURST & DICKMAN, 500 ONEOK Plaza, 100 West Fifth Street, Tulsa, OK 74103.

s/Craig Tweedy

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CRAIG TWEEDY and LILLIAN GRAHAM,	)	Filed June 30, 1992
Petitioners,	)	
vs.	)	No. 92-5107
HONORABLE THOMAS R. BRETT, UNITED STATES DISTRICT JUDGE.	)	
Respondent.	)	

PETITION FOR REHEARING, WITH SUGGESTION EN BANC
PRELIMINARY STATEMENT

The Petitioners, Craig Tweedy and Lillian Graham, pursuant to Rule 40 of the Federal Rules of Appellate Procedure and Tenth Circuit Court, respectfully, petition the Court for rehearing, with suggestion en banc, of their May 28, 1992 Petition for Writ of Mandamus against the Respondent, The Honorable Thomas R. Brett, United States District Judge for the Northern District of Oklahoma, who,

without jurisdiction and by plain usurpations of power, enjoined the independent State Court action and threatened irreparable harm by an appeal thwarting sanction. The June 15, 1992 summary decision by the Circuit Court Panel of Judges Logan, Anderson and Ebel misapprehended that such Petition did not satisfy the requirements for extraordinary mandamus relief.

Significant grounds re-enforce the original mandamus grounds to fully warrant and, indeed, compel this Petition for Rehearing. On June 15, 1992, the Plaintiff below/State Court Defendant, American Airlines, Inc. ("AA") moved the Respondent to hold Petitioners in contempt of his March 31, 1992 Injunctive Order for seeking mandamus relief from this Court in violation of said Order. AA's motions urge new and additional

sanctions designed to impede or thwart the right and means of ordinary appeal.

The abridgment of appellate rights arising under 28 U.S.C. §§1651(a) and 1291 against the injunction is clearly extraordinary. The threat of contempt for exercising Congressionally conferred appellate rights is equally extraordinary. These new case elements remained veiled, until the June 15, 1992 denial of mandamus, to show an intent to enforce the deprivations of the Petitioners' fundamental rights and deny the right and practical means for an ordinary appeal. Such new elements significantly enlarge, empower and confess the original mandamus grounds.

The original grounds clearly and indisputably show the equally extraordinary usurpations of relitigation jurisdiction under the Anti-Injunction

Act, 28 U.S.C. ¶2283, and power under the Federal Rules, plus threat of irreparable harm and injury from the appeal thwarting sanction of the March 31, 1992 injunction. The currently increased threat, or assurance, exists of irreparable harm and injury to the Petitioners' liberty, property and rights of ordinary appeal, unless the Court justly grants a rehearing and writ of extraordinary mandamus in aid of appellate jurisdiction.

I. STANDARDS FOR EN BANC REVIEW

I, Craig Tweedy, express a belief based upon a reasoned and studied professional judgment that the Panel's summary decision appears to be contrary to the following decisions of the United States Supreme Court and of the United States Court of Appeals for the Tenth Circuit, and consideration by the full

Court is necessary to secure and maintain uniformity of decisions and their application in this Court: Mallard v. U.S. Dist. Court for Southern Dist. of Iowa (1989), 490 U.S. 296, 308-309, 109 S.Ct. 1814, 1822; Johnson v. Rogers (CA 10, 1990), 917 F2d 1283, at 1284; and Storage Technology v. U.S. D. Ct. for D. of Colo. (CA 10, 1991), 934 F2d 244, at 246-247: "those exceptional cases where the inferior court acted wholly without juridisdiction or so clearly abused its discretion as to constitute usurpation of power * * lack adequate alternative means to obtain the relief they seek * * and carry the burden of showing the [their] right to issuance of the writ is 'clear and indisputable.'"

I further express a belief based upon a reasoned and studied professional judgment that the panel decision

overlooked or misconstrued Petitioners' prima facie showing of the Respondent having acted wholly without jurisdictional power and/or by plain usurpations of power, and by enjoining and thwarting appeal rights threatening irreparable harm and injury to Petitioners' rights. The pending threats of contempt and additional sanctions significantly enlarge the extraordinary issues to clearly warrant a rehearing and writ of mandamus in aid of appellate jurisdiction, under the above cited authorities.

II. THE EXTRAORDINARY ISSUES URGED FOR REHEARING

The extraordinary issues shown by the original Petition and subsequent events to compel this Petition are:

1. The Respondent acted wholly outside of the narrow

jurisdictional power and authority of the Anti-Injunction Act, 28 U.S.C. §2283.

The actual independant State Court claim (Orig. Petition, Exh. F, ¶¶3-5) was based solely upon the discovered wrong of the extrinsic fraud of AA's 1985 engine overhaul, material to the injuries to Ms. Graham's rights (Orig. Petition, pp. 2-4, 10; Exh. F, §§4-5). Such independent claim to deny the prohibited benefit of extrinsic and material fraud is empowered by this Court's decisions, and by extrinsic fraud exceptions to res judicata (Id., pp. 10; Exh. B, pp. 5-6, 12-13).

Such independent claim was discovered subsequent to the issues decided in Graham I & II below, and did not need, nor seek to relitigate such issues (Id., pp. 2-3, 9-10; Exh. B, pp.

12-13). Such claim sought to deny to AA, one of the State Court Defendants, the prohibited benefit of the extrinsic 1985 engine overhaul fraud, material to the unfair injuries to Ms. Graham's rights (Id., pp. 2-4, 9-10; Exh. B, pp. 12-13). Such 1985 engine overhaul pretext was not a fact issue decided in Graham I & II, and had induced good faith reliance (Orig. Petition, Exh. F, ¶5). AA not only could not show a relitigation exception, it carefully avoided mention of the discovered 1985 engine overhaul fraud basing the independent claim (Id. pp. 4; Exh. B, pp. 8-9; Exh. E). Because the background pretext of the 1985 engine overhaul had not been "actually" decided, the discovered independent claim for such extrinsic and material fraud was clearly and absolutely immune under the Act (Id., pp. 2-4, 10-11); Chick Kam Choo v. Exxon

Corp. (1988), 486 U.S. 140, 108 S.Ct. 1684, at 1690.

The Respondent conceded such immunity of the actual claim by arbitrarily altering such claim through the March 31 injunction (Orig. Petition, Exh. A, pp. 7, 10 & 12). The Petitioners were arbitrarily enjoined from litigating a materially different claim. Such altered claim was arbitrarily imposed by the Respondent as improperly seeking to relitigate a formerly decided issue of whether Ms. Graham did 1985 work damage to a turbine engine disc part (Orig. Petition, pp. 4-6, 10-11).

By such fiat, the Respondent arbitrarily converted one proper independent damage claim affect as the "gravemen" of such claim, i.e., the impossibility of turbine disc part work during the non-existent 1985 engine

overhaul (Orig. Petition, Exh. A, p. 10). The decisions of this Court permitting independent claims were, thusly, set aside (Id. p. 10, Exh. B, pp. 5-6, 12-13). The Respondent combined such proper damage claim affect with arbitrarily edited words; "fraudulently represented * * fraudulently concealed * * disc," by taking them out of their context in showing the discovered and material 1985 engine overhaul fraud basing such actual claim and constructed an invalid relitigation exception to the Act (Orig. Petition, pp. 4-6, 10-11). Thus, the Respondent created and usurped jurisdiction, wholly outside of the intent of the narrow relitigation exception to the Anti-Injunction Act, as narrowly construed (Id., pp. 9-11; Exh. B, pp. 3-5, 8-9); Chick Kam Choo, supra, and Brooks v. Barbour Energy Corp.

(CA 10, 1986, 804 F2d 1144, 1146.

Lastly, and as below shown, the Respondent acted wholly without jurisdiction to enjoin and abridge the Petitioners' rights to seek appellate relief from this Court (Orig. Petition, Exh. A, p. 11). Such appellate rights were conferred by Congress, 28 U.S.C., §§1652(a) and 1291;

AND/OR

The Respondent so clearly abused his discretion as to constitute usurpation of power.

The Respondent abused just Rule 8(f) powers by arbitrarily converting a damage affect of, and edited out of context words from, the actual claim to create and impose a materially different claim as a relitigation exception to the Act (Orig. Petition, pp. 4-6, 9-11). By such plain usurpation, the Respondent

attempted to create the jurisdictional power and authority to enjoin such immune claim and any right of appeal from the usurpations (Id., pp. 4-6, 10-12).

In such reconstruction of the immune claim, the Respondent followed AA's evasive pleading lead (Id., Exh. E) by unfairly avoiding mention of the discovered wrong of the extrinsic 1985 engine overhaul fraud composing the sole wrong asserted by the actual claim (Orig. Petition, pp. 4; Exh. B, p. 9). The just and liberal intent of Rule 8(f) was avoided (Id. pp. 8-9). The Respondent enjoined Petitioners from litigating such unjudiciously imposed State Court claim as being a vexatious attempt to relitigate the formerly decided issue of Ms. Graham's 1985 work damage to the turbine disc (Id., p 4-5).

Without fair notice, the biased

Respondent imposed an appeal thwarting sanction of costs and attorney fees, with resulting due process violation, for defending such vexatious claim. AA's pleadings urged sanctions solely to recover AA's fees and costs expended in defending the independent State Court claim (Id., pp. 6, 12).

Lastly, the Petitioners were enjoined from seeking appellate relief from this Court, as evidenced by the injunctive language (Id., Exh. A, p. 11) and by AA's June 15, 1992 Motion for Contempt, as below referenced.

Under the criteria of Storage Technology, supra, the usurpations of power unconferred by 28 U.S.C. §§1651(a) and 1291, the Federal Rules and narrow jurisdictional power and authority of the Anti-Injunction Act (Orig. Petition, pp. 9-11; Exh. B., pp. 3-5, 8-10; Exh. A, p.

11)) are clear and indisputable.

Moreover, the March 31, 1992 abridgement, by injunction, of rights to seek appellate relief is a plain usurpation of power. It and the ominous threat of contempt for the violation reveal serious problems below, plus fear of just appeal exposure and admit much needed credibility for Petitioners. It concedes claim immunity. It tends to concede that no genuine defense exists against the actual fraud claim, the unusually extreme facts of which are of AA's unlawful creation.

2. The Petitioners' lack the adequate alternative means of an ordinary appeal.

The Petitioners' means and statutory rights to seek any appellate relief were outrageously enjoined by the March 31, 1992 Order, and irreparable harm and

injury from their loss of appellate rights, property and liberty is threatened, or assurred, by more sanctions and the ominous comtempt proceeding. As a practical matter, the Petitioners' last appellate opportunity is the grant of this Petition for Rehearing.

The threated irreparable harm and injury from March 31, 1992 injunction and sanction, and from AA's June 15, 1992 motions urging additional economic and other sanctions, plus contempt for seeking mandamus relief from this Court are shown, as follows:

A. Original Sanction Assessed

Subsequent to mandamus being sought on May 28, 1992, the unfairly imposed March 31, 1992 sanction (Orig. Petition, pp. 6, 12) was assessed in an attorney fee and associated cost amount of

$44,210.71 (Exhibit "A" hereto). Such sanction threatens to force one or both Petitioners to relinquish their property and fundamental rights, or elect the further irreparable harm of bankruptcy protection to permit the alternative means of an ordinary appeal.

B. Abridgment of Appellate Rights and Contempt

On June 15, 1992, AA filed its Motion (Exhibit "B" hereto) with the Respondent urging additional economic sanctions, plus a finding of Petitioners's contempt for violating the March 31, 1992 injunction by seeking mandamus from this Court. Such March 31, 1992 Order (Orig. Petition, Exh. "A", p. 11) is quoted by AA's ominous motion as enjoining Petitioners from "proceeding further" with the immune, but judicially reformed State Court claim and,

specifically applicable to contempt,

"from instigating, against American and those parties privy thereto to the claims and issues herein, and further action or proceeding, in either state or federal court or any court or administrative tribunal, on these claims and/or issues." (Emphasis added)

Such veiled abridgment of appellate rights granted by Congress, under 28 U.S.C §§1651 and 1291, was overlooked in preparation of the original May 28, 1992 Petition, and by this Court. Only after this Court's June 15, 1992 denial of mandamus relief was such injunctive nuance against appeal rights clarified, or ominously flaunted. Such delay is revealing. It shows that a contempt holding to protect against an ordinary appeal exposure is as real, probable and assured by the clear record of the

jurisdiction, power and authority of law being plainly usurped to oppressively enjoin and abolish the Petitioners' fundamental rights and independent claim.

Such oppressive abridgment of appellate rights and other abuses of discretion by plain usurpations of jurisdiction and power are wholly void, because, "A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creator." Stoll v. Gottlieb (1938), 305 U.S. 165, 171, 59 S.Ct. 134, 197. (Orig. Petition, pp. 9-10)

C. AA Concealment, While Seeking Appeal Thwarting Sanctions from This Court

AA's June 15, 1992 Motion for Sanctions filed with this Court ploys

(Exhibit "C"), at page 11, that said June 15, 1992 Motion filed with the Respondent innocently, "seeks to enforce the Court's March 31, 1992 Order and Injunction." How does AA properly seek contempt for Petitioners exercising an enjoined appellate right? Such gross failure of candor reveals a plan to cause the Petitioners' rights and practical means of an ordinary appeal to absolutely disappear, absent extraordinary writ relief.

Such motion to this Court urges sanctions and disbarment. AA's common practice is to distract attention from its wrongdoing by urging sanctions.

AA's Motion presents a chronology of lengthy litigation, at page 3, purporting the Petitioners "multiplicative and vexatious litigation." By reverse appearances,

AA seeks to retain the prohibited benefit of its extrinsic 1985 engine overhaul fraud basing the invalidly enjoined claim, which extrinsic fraud was essential to the issues decided in Graham I & II (Orig. Petition, pp. 3-4, 10; Exh. B, pp. 5-6) to commence such chronology.

Subsequent to the Graham I & II issues being decided, such extrinsic fraud was discoverd by virtue of Freedom of Information access to FAA and engine records secured by the 1990 U.S. DOT's criminal investigation of the FAA, including FAA misconduct with AA in formal Graham II discovery (Orig. Petition, p. 2; Exh. F, ¶¶3-5, p. 6-7). If AA had properly revealed the non-existence of such 1985 engine overhaul in Graham I, such chronology would not exist. Rather, in Graham I and II, AA produced forged FAR safety

records, under purportedly proper FAA surveillance, of a ghost engine repair inducing acceptance of the pretext (Id., Exh. F, ¶4, 8-11).

Plus, AA used induced circumventions of the Anti-Injunction Act, and moves this Court to impose sanctions and disbarment, while concealing its ominously delayed contempt motion. Why so, unless AA is without genuine defenses to the fraud and injunction, and must seek to destroy the Petitioners's fundamental rights and practical means of an ordinary appeal to this Court?

D. AA's Records Distortion in Appeal No. 91-5060 Threaten Further Injury to Current Appeal Rights

On June 15, 1992, AA's third Motion for Sanctions (Exhibit "D" hereto) was filed in Graham I, the Title VII Civil

Rights Case No. 86-C-516-C. Such motion arises from this Court's April 7, 1992 Order in Appeal No. 91-5060 allowing sanctions for vexatious filings.

This summary/history is important. Appeal No. 91-5060 was from Judge Cook's February 27, 1992 Order for refusing to hear on the merits Ms. Graham's December 24, 1990 Rule 60(b) motion for equity relief from the discovered extrinsic fraud of the 1985 engine overhaul. Judge Cook's finding ruled that the discovered fraud upon the Court and Ms. Graham's rights were "untimely" filed.

After appealing such procedural refusal to hear, and on September 10, 1991, such claim was "timely" filed as an independent action in the District Court of Tulsa County, Oklahoma (Orig. Petition, Exh. F, ¶¶3-5). As above stated, AA's injunctive pleadings below

did not and could not state that such formerly accepted and material background pretext of the 1985 engine overhaul had been a fact issue actually decided in Graham I & II (Orig, Petition, p. 4; Exh. B, p. 5; Exh. E). Such pleading evasions revealed AA's awareness that only an attempt to relitigate an issue actually decided may invoke the narrow relitigation exception to the Anti-Injunction Act, (Id., pp. 3, 10; Exh. B, pp. 3-4, 6-7), under Chick Kam Choo v. Exxon Corp, supra, 108 S.Ct., at 1690.

However, the Respondent took assignment of the case and refused to disqualify for bias and prejudice, then known from former litigation (Orig. Petition, Exh. A. p. 13; Exh B, pp. 19-20) and clearly evidenced in this mandamus matter.

These Petitioners were confident then, as now, that a valid relitigation exception did not exist. However, they were greatly concerned that the strongly partial Respondent would make arbitrary use of the pending appeal in No. 91-5060 to usurp an "in aid of jurisdiction" ground, the second exception to the Anti-Injunction Act. To safeguard their immune claim, they moved to dismiss such appeal (Exhibit "E" hereto) as granted on January 21, 1992.

Thereafter, AA moved for sanctions for Petitioners' vexatious filings and unfairly induced such grant on April 7, 1992. The April 20, 1992 Petition for Rehearing showed that AA had distorted and edited material portions of the record and was the actual vexatious party. However, AA's response interjected the prejudicial appearance of

the Respondent's March 31, 1992 injunction and sanctions for vexatious litigation.

The April 27, 1992 Reply Brief showed AA's outrageous misconduct on both counts, but it was not justly heard. On April 27, 1992, these Petitioners received notice of the denial of rehearing. Thus, the superficial appearance of a valid injunction and sanction doubtlessly induced this Court to misapprehend and affirm that the appeal and dismissal in No. 91-5060 were without foundation and vexatious. By undue tactics over substance, AA has unfairly converted the Petitioners' safeguarding of the immune claim from a feared usurpation into increased harm to the appellate means to safeguard the immune claim from the different usurpation imposed.

This Court's consideration of such April 27, 1992 Reply Brief in No. 91-5060 should provide needed justice and credibility for Petitioners.

III. SUMMARY

This Petition for Rehearing clearly and indisputably shows the extraordinary grounds of the Respondent applying selective law by usurping the jurisdiction, power and authority of law, while abridging the right to seek appellate relief. Upon close scrutiny, the nuances of the Order of March 31, 1992 reveal a calculated design to deprive the Petitioners' rights in a manner, wholly foreign to a society based upon equality and justice, under the law.

Except for an extraordinary writ of mandamus being issued in aid of appellate jurisdiction, the irreparable

harm and injury existing and threatened or assurred to Petitioners' liberty, property, rights and means of an ordinary appeal is clear, indisputable and ominous.

Justice and rights under the law, or selective law by usurpations, without appellate rights, is an extraordinary and unpleasantly real issue, respectfully, but squarely presented for decision by each Judge of this Court.

WHEREFORE, these Petitioners, respectfully, pray for a nomination and decision by the Court, en banc, to justly rehear and, in aid of appellate jurisdiction, issue an extraordinary writ of mandamus directing the Respondent to exercise his clearly defined and peremptory duties to stay within the jurisdiction and authority of law, and to wholly vacate the Order of March 31,

1992, and to dismiss the meritless injunctive action below, plus other relief deemed just and appropriate by this Court.

RESPECTFULLY SUBMITTED,

s/Craig Tweedy
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ATTORNEY FOR CO-PETITIONER,
LILLIAN GRAHAM

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT IN AND
FOR TULSA COUNTY, STATE OF OKLAHOMA

LILLIAN A. GRAHAM, Plaintiff,	)	Filed November 27, 1991
vs.	)	Case No. CJ-91-4125
AMERICAN AIRLINES, INC., GEORGE BARTON and BUCK WILLIAMS, and WAYNE PING, AGENT for UNITED TRANSPORT WORKERS UNION OF AMERICA, LOCAL 514, Defendants.	)	

SECOND AMENDED PETITION

The Plaintiff, Lillian A. Graham, brings her Second Amended Petition and presents her claim for the discovered engine overhaul fraud of the Defendants and states to the Court that:

1. The Plaintiff, Lillian A. Graham ("Ms. Graham"), is a good faith resident of Tulsa County, Oklahoma, where she resided at all times material to this action.

2. The Defendants, George Barton,

Buck Williams and Wayne Ping are residents of Tulsa County, Oklahoma, or an adjacent County; and Wayne Ping, at all times material, acted as an agent for Defendant, Transportation Workers Union of America, AFL-CIO, Local 514 ("Union"), which Union maintains its organization and place of business in Tulsa County, Oklahoma. The Defendant, American Airlines, Inc. ("American"), is a foreign corporation doing business within Tulsa County, Oklahoma.

FRAUD CLAIM

3. In 1984-85, Ms. Graham was, to her best knowledge and belief, the only female employee working for American as a mechanic in the men's area at American's Tulsa, Oklahoma maintenance base and in June of 1985, George Barton was Ms. Graham's JT3 engine shop supervisor at American, and Buck Williams

was her crew chief, and Wayne Ping was her trusted Union representative.

4. Commencing in June of 1985, the Defendants acted in continuous concert with each other and parties unknown to Ms. Graham to fraudulently conceal from Ms. Graham the material fact that the Pratt & Whitney JT3 jet engine under S/N 644980 had last been overhauled in 1982, and the material fact that said engine was not overhauled in 1985, and the material fact that its turbine disc under S/N 9B6198 was removed, damaged, scrapped and not reinstalled in said engine after the last of American's two back-to-back 1982 overhauls of said engine, and Defendants fraudulently represented that said engine was overhauled by American in 1985 for the intent and purposes of inducing Ms. Graham to accept, rely and act upon such underlying fact pretext and

to wrongfully and maliciously injure Ms. Graham and her rights. In support of such 1985 engine overhaul pretext, the Defendants generated personnel and maintenance records and charges to show Ms. Graham's work on said disc during the purported 1985 overhaul of said engine, and the Defendants have actively concealed the underlying fraud of the 1985 engine overhaul pretext in a continuous and uninterrupted manner, and such fraudulent concealment required and has received the active concert of others, including the FAA. And in 1990, the Defendants acted through American to generate records showing the 1985 engine overhaul and, acting through the retired George Barton, affirmed the fact of the 1985 overhaul of said engine and, in 1988 and 1990, acted through American to exercise its indirect

influence of long standing with the FAA in order to cause the FAA to endorse the fact of American's 1985 overhaul of said engine, and the FAA did so with notice and records knowledge that such 1985 engine overhaul had not happened.

5. Ms. Graham knew that she had not worked on a disc removed from said engine in 1985, but accepted, relied upon and acted in good faith upon Defendant's representations of the underlying 1985 overhaul of said engine, all to her considerable personal, emotional and economic detriment. Ms. Graham progressively challenged the validity of the maintenance records produced by Defendants for said 1985 engine overhaul and exercised due diligence to locate and secure the actual records for said 1985 engine overhaul, until November-December, 1990. Ms. Graham's

former acceptance of the material and underlying misrepresentations of said 1985 engine overhaul, as induced by Defendants, operated to materially assist the Defendants' wrongful plan to injure her and to defeat her personal and employment rights, all to her resulting injury and damages stated in the Damage Claim, below.

LIMITATIONS CLAIM

6. This petition was timely commenced, under 12 OS § 95(2), within two years of the material fraud notice of November, 1990 and discovery on December 18, 1990, and the Defendants may not benefit from their active and continuing fraudulent concealment of the material fact that said engine was last overhauled by American in 1982 and/or from misrepresenting the fact of the 1985 engine overhaul. As above stated, Ms.

Graham questioned the 1985 records provided by the Defendants and exercised reasonable diligence to locate and secure the actual records of American's 1985 overhaul of said engine and did not discover or have reasonable cause to discover the material fact that American had last overhauled said engine in 1982, until her November 13, 1990 notice and December 18, 1990 discovery of such fact, which was made possible only by virtue of Freedom of Information access to essential records and facts secured by a late 1990 criminal investigation conducted by OIG agents (Office of Inspector General, United States Department of Transportation) into FAA misconduct with American. This statement showing the Petition to be timely filed is further supported by the facts and circumstances set forth in Paragraphs

7 to 16, inclusive, below.

7. Ms. Graham had reasonable cause to accept and rely upon the Defendants' representations that said engine was overhauled by American in 1985 by reason of the facts and circumstances, as follows:

a. The JT3 Engine with S/N 644980 was owned by Ports-Of-Call in 1985 and Ms. Graham had reason to believe that one or more JT3 engines owned by Ports-Of-Call had been overhauled by American in and about 1985.

b. American had removed Disc S/N 9B6198 from Engine S/N 644980 during the two back-to-back overhauls of said engine in 1982 and, thus, possessed such scrapped disc in 1985.

c. The Defendants and their dirty trick artists generated FAR regulated maintenance records around said Disc S/N

9B6198 to support the pretext of American's 1985 overhaul of said engine and create the deceptive appearance that the purported 1985 engine overhaul was subject to good faith FAA surveillance, under the FAR safety requirements.

d. Ms. Graham relied upon the formal disc charge grievance and defensive tactics brought on her behalf by her Union Representative, Wayne Ping, who withheld from Ms. Graham his knowledge that said engine had not been overhauled in 1985.

e. Ports-Of-Call ("POC") knew that said engine had not been overhauled in 1985, and provided American's 1982 engine records to Denver FAA personnel in 1986, 1987 and 1988 for FAR approval of airworthiness and flight of said engine, but responded to her 1988 discovery by producing portions of the 1985 engine

records generated by Defendants.

f. The FAA's August, 1988 letter response to Ms. Graham's complaint of 1985 records irregularities stated that the FAA's recent inspection of records for said engine showed FAR compliance and no irregularities, but did not mention the 1982 date of the maintenance records inspected.

g. In 1989, the Federal Court at Tulsa accepted the Defendants' representations and evidence of the 1985 overhaul of said engine, as supported by Ports-Of-Call correspondence and said August, 1988 FAA letter of records compliance.

h. In 1990, the Defendants generated and produced additional records purporting the 1985 overhaul of said engine.

i. In 1990, American's 1985 Engine

Log Records Supervisor Phillipe, and then retired Supervisor, George Barton, affirmed American's 1985 overhaul of said engine.

j. In 1990, the FAA gave its FAR stamp of approval to the 1985 records of said engine, and did so with full notice that such 1985 overhaul had not happened, which facts more fully set forth below.

8. From and after June of 1985, Ms. Graham progressively challenged the Defendants' production of records for such 1985 overhaul from being edited to being forged, and continued to exercise due and persistent diligence to locate and secure the actual records of American's 1985 overhaul of said engine, until her initial November 13, 1990 notice and December 18, 1990 discovery of the fraud. On December 17, 1990, Ms.

Graham's attorney and her Aviation Expert, Jack J. Burke, gained Freedom of Information access at the Federal Building at Fort Worth, Texas to review records relating to said engine and secured from the engine owner and FAA in the Fall of 1990 by OIG Agents, Criminal Division, for the Office of Inspector General for the U.S. Department of Transportation, as below stated.

9. Said engine owner and FAA records were secured during the OIG's investigation of Ms. Graham's mid-1990 complaints of the FAA's upper management complicity with American. Pursuant to discovery processes and in January, 1990, FAA Inspector Pierce obtained and reviewed the forged and bogus 1985 engine overhaul records from American. Acting under admitted FAA management instructions, Inspector Pierce expressed

the FAA's refusal of duty to secure the actual 1985 maintenance records required to be retained by the engine owner, which records were basic to Ms. Graham's charge of the FAR irregularities and forgeries of the records produced for said 1985 engine overhaul.

10. Such OIG investigation of FAA and American misconduct in this matter was adjunct to the on-going criminal investigation involving the FAA's three years of involvement with Eastern Airlines' management by looking skyward from complaints from mechanics and pilots of maintenance irregularities and forgeries. Such FAA management failures in the Eastern Airlines matter had spawned the extraordinary 1990 efforts of the U.S. Justice Department to obtain 60 criminal indictments for the maintenance record irregularities and forgeries

occurring for years under the nose of the FAA personnel.

11. Ms. Graham's December 17, 1990 Freedom of Information access and inspections of OIG secured engine and FAA records operated with other gathered fact and records to show that said engine had last been overhauled by American in 1982. Such discovered fact, in turn, showed that the Defendants fraud of the 1985 engine overhaul pretext had been covered up with the active concert of Ports-Of-Call and FAA, and such facts show that such fraud could not reasonably have been discovered by any reasonable exercise of diligence by Ms. Graham, except for the OIG intervention, as above alleged. As discovered, such extraordinary exercises of Defendants' wrongful cunning, power and influence upon multiple industry players shows that

their wrongful plan exceeded the significance and rights of one female mechanic.

12. The discovered facts show that when the Defendants generated records for the 1985 engien overhaul, American knew from its prior course of conduct and experience with the FAA that it could unlawfully influence FAA to look skyward American's FAR wrongdoings in much the same FAA manner as in the above stated Eastern Airlines matter and below mentioned 1979 DC-10 crash matter. The FAA's material fact and records concealment of its tacit approval of American's safety gamble for its reckless forklift engine change procedure and resulting engine mount damage causing the May, 1979 DC-10 crash, and such FAA concealment operated to defy the investigation of FAA and American

pre-crash involvement with such procedure as demanded by Congress and further operated to jeopardized the rights of JOe White and impede his damage claims against American, as below stated.

13. In such Joe White case, the recently uncovered facts show American and the FAA could not afford the public exposure of the pre-crash approval given by American and FAA to the unsafe DC-10 engine change procedures using a forklift and recklessly cause engine pylon damage being reported by Superintendent Joe White and upon the urging of the NTSB and demands of Congress, FAA Administrator Bond ordered an investigation of FAA and American involvement with such forklift procedure and appointed a pliably myopic Investigator in Charge, John Cyrocki, who obligingly narrowed the investigation and appointed to the investigative team the

FAA personnel most logical to be investigated and interviewed only those mechanics screened by American and avoided required interviews of all personnel involved with the forklift engine change procedures, specifically excluding DC-10 Maintenance Superintendent Joe White and his unheeded pre-crash engine pylin damage reports. The NTSB, Congress and public were victimized by such FAA cover-up, and Joe White was discredited as a potential witness by being fired and destroyed as a cheat, for the reason that he had refused to give perjured testimony by forgetting his knowledge and written damage reports, which had been covered up by American and the FAA.

14. The course of conduct of the FAA cover-up of such DC-10 crash facts and Joe White reports served the

Defendants' confidence in American's capacity to influence another FAA cover-up, if necessary, of the engine record generated to show the pretext of said 1985, and FAA complicity became essential and the FAA complied by the above stated 1988 letter and in 1990, as below stated.

15. In 1990, Ms. Graham's discovery processes were issued to the FAA to require the FAA to secure the actual records of the 1985 overhaul from American, but FAA management applied improper pressure upon FAA Flight Standards Inspector Pierce to cover-up the Defendants' on-going fraud and concealment. American provided the records for the purported 1985 engine overhaul Inspector Pierce, who, upon review, promised to secure the FAR required records from the engine owner,

then unknown to Ms. Graham, in order to better measure the irregularities and fraud charged by Ms. Graham. Thereafter, Inspector Pierce yielded to upper management pressure by refusing his promise and the FAA's duty to secure such FAR required maintenance records history and stated that he did "only what" he "was instructed to do." The production of the actual engine records would have made it difficult for FAA Inspector Pierce to offer his opinion, as he did, that no concrete evidence of forgeries and fraud was found in the 1985 records, and/or to permit him to describe such 1985 records as being normal and OK due to the operation of the engine, because Inspector Pierce admitted that such 1985 records did not contain a completed and correct FAA Form 337 to permit the engine's flight use under the FARs, and

such records depicted the engine being released without its shaft. Such FAA misconduct with Defendants was designed to effectively conceal from Ms. Graham the material fact the 1985 overhaul of said engine had not happened.

16. The above stated 1988 and 1990 FAA misconduct and cover-up with the Defendants is further shown by the fact that the FAA in 1986, 1987 and 1988 had approved continued flight use of said engine, based upon American's 1982 maintenance records. Such FAA approvals show that the FAA well knew in 1988 and 1990 that no overhaul of said engine had occurred in 1985 and that 1985 engine records were not genuine and seriously violated the FARs and were intended for fraudulent purposes. Such FAA cover-up served to effectively block and impede all reasonable notice and opportunity

for Ms. Graham to discover that said engine had not been overhauled in 1985, and futher served to induce her continuing diligence and efforts to locate the actual and valid records for said 1985 engine overhaul. Such facts show that Ms. Graham could not have discovered, by the exercise of reasonable diligence, the crucial fact that said 1985 engine overhaul did not occur, unless and until the governmental OIG intervention and Freedom of Information access to OIG secured records, as above alleged.

DAMAGES

17. As a direct and proximate result of the Defendants fraud and wrongdoing, Ms. Graham has suffered the loss of her employment and lawful rights and her reasonably expected wages, benefits and employment as an airlines

mechanic and has been black-balled in the airlines industry, past, present and for the future, and has suffered severe humiliation and emotional and physical distress and substantial damage to her credit standing and earnings and opportunity profits, past, present and for the future, and Defendants are liable for her actual and consequential damages in excess of $10,000, exclusive of interest and costs. The Defendants have acted with malice and in a wanton manner with reckless disregard for Ms. Graham's rights and economic and personal well being and are liable for punitive and exemplary damages in excess of $10,000, exclusive of interest and costs.

WHEREFORE, the Plaintiff, Lillian A. Graham, demands judgment against Defendants, and each of them, jointly and severally, for actual and consequential

damages and punitive damages in the amounts and for the facts and grounds, above stated.

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC.,	)	
	)	Filed
Plaintiff,	)	
	)	Sep 27, 1991
vs.	)	
	)	No. 91-C-762-C
CRAIG TWEEDY and	)	
LILLIAN GRAHAM,	)	
	)	
Defendants.	)	

BRIEF IN SUPPORT OF PLAINTIFF'S COMPLAINT AND APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTION

Plaintiff, American Airlines, Inc. (hereinafter sometimes referred to an "American"), files this brief in support of its Complaint and Application for Preliminary and Permanent Injunctions ("Complaint and Application"), filed concurrently herewith. American seeks to enjoin Defendants Craig Tweedy and Lillian Graham from relitigating in the District Court of Tulsa County certain issues which were previously

adjudicated in the cases styled Lillian A., Graham, Plaintiff, v. American Airlines, Inc., a Delaware Corporation, Defendant, Case No. 86-C-516-C ("Graham I"), and Lillian A. Graham, Plaintiff, v. American Airlines, Inc., Defendant, Case No. 89-C, 815-P ("Graham II"). Both these cases pended in the United States District Court for the Northern District of Oklahoma. The allegations contained in the Complaint and Application are incorporated herein by reference.

BRIEF STATEMENT OF THE FACTS

On the 23rd day of May, 1986, Lillian Graham filed an action for discrimination on account of sex, predicated on 42 U.S.C. § 2000(e) et seq., and Title VII of the Civil Rights Act of 1964. On August 10, 1989, the Court entered judgment in this case on behalf of the Defendant, American

Airlines, Inc., and against the Plaintiff, Lillian A. Graham. The Defendant, Craig Tweedy, represented Ms. Graham in that case. On that date the Court entered its Findings of Fact and Conclusions of Law. The Court found that Graham was discharged for insubordination, loafing on the job, failure to cooperate with other employees, and for her overall employment record consisting of several disciplinary actions. The Court found as a matter of fact that Graham was a disciplinary problem. As a matter of fact the Court found that Lillian Graham had damaged a fourth-stage turbine disk on a JT3 engine which had been sent to American Airlines by a third party air carrier by the name of Ports of Call. Graham perfected her appeal from this adverse decision on September 11, 1989.

Thereafter, Graham, being represented by the Defendant, Craig Tweedy, filed a second action captioned Lillian A. Graham v. American Airlines, Inc., on September 8, 1989. The gist of this action was that American had lied, cheated, defrauded and by using perjured testimony and bogus and forged engine records in order to obtain a favorable judgment in Graham I. On February 21, 1991, the Court entered an Order Granting Defendant's Motion for Summary Judgment. In this Order, the Court found that Ms. Graham had repeatedly raised the same allegations of fraud, altered or concealed evidence and perjury, which she had asserted in the previous case. And that each of the factual allegations made in the second case was either ruled on by the Court in the first case or was previously raised in the first case even

if not specifically disposed of by the Court in the second case. The Court concluded that Graham's assertions in the second case constituted an impermissible collateral attack on the earlier judgment. The Court also found that Ms. Graham could not relitigate these issues in an independent action. Defendant Graham chose not to appeal this Order and judgment.

Prior to the entry of judgment in Graham II, Graham dismissed her appeal in Graham I, and filed a motion to vacate which was subsequently denied. After a series of motions for reconsideration Graham filed an appeal which presently pends in the Tenth Circuit Court of Appeals.

On September 10, 1991, Graham filed a Petition for Fraud in the District Court for Tulsa County, State of

Oklahoma, against American Airlines, Inc., George Barton, Buck Williams, and Wayne Ping, Agent for United Transportation Workers Union of American, Local 514. The Defendant, Craig Tweedy, continues to represent Ms. Graham in this case. This Petition repeats the allegations made in Graham I and Graham II, alleging that the Defendants, acting in concert, sought to fraudulently conceal from Graham certain facts concerning engine records which had been the subject of the two previous cases. Graham again alleged that the fraudulent concealment and wrongdoing of the Defendants caused the judgment to be entered against Ms. Graham and that it was the Defendant's intent to "emotionally bash" Ms. Graham and to "cause the termination" of Ms. Graham from her employment at American Airlines.

Similarly, it is alleged that American took this action to "act as an extreme example to deter other females from desiring to work as mechanics in the men's areas" at American Airlines. These were precisely the issues which were considered and ruled upon the the two prior Federal Court actions.

The Defendant, Craig Tweedy, as attorney for Lillian Graham, makes factual allegations that are diametrically opposed to the facts found by this Court in Graham I and Graham II. Notwithstanding this Court's specific factual findings to the contrary, these Defendants continue to allege and argue in this State Court Action that American Airlines, in concert with others, created a false and bogus set of engine records as a pretext to terminate Lillian Graham

This State Court Action constitutes an impermissible collateral attack on this Court's judgments in Graham I and Graham II. As a result of these actions, American Airlines, Inc. has incurred substantial attorney fees and has suffered considerable inconvenience and expense in relitigating facts that were litigated both in Graham I as well as Graham II over a period of five years. If the Defendants Lillian Graham and Craig Tweedy are allowed to continue to disregard the final judgments of this Court, and to multiply this litigation based upon the allegations of fact that are diametrically opposed to the specific findings of this Court, American will be forced to continue to defend such litigation, which will result in irreparable harm to American, for which there is no adequate remedy at law.

The Defendant, Craig Tweedy, has, in this action and in other unrelated litigation, demonstrated a propensity for multiplying litigation by disregarding valid final judgments of courts of competent jurisdiction and filing new lawsuits in other jurisdictions based upon factual issues which have been fully addressed and finally adjudicated in prior litigation. Graham's recourse is in post-judgment motions in this Court or appeal, both avenues of which she has taken advantage.

ARGUMENT AND AUTHORITY

I.

AN INJUNCTION IS A NECESSARY AND APPROPRIATE REMEDY TO PREVENT DEFENDANTS FROM RELITIGATING ISSUES WHICH HAVE BEEN PREVIOUSLY ADJUDICATED BY THIS COURT

A. This Court Has Statutory and

Equitable Authority to Protect its Jurisdiction By Enjoining Relitigation of Issues Previously Decided by This Court.

1. 28 U.S.C § 1651(a)

This Court has statutory authority to protect its jurisdiction in the Graham I and Graham II cases by enjoining Mr. Tweedy and Lillian Graham from relitigating issues which were decided by this Court in the Graham I and Graham II cases and which have not been appealed. 28 U.S.C. § 1651(a), also known as the All-Writs Act, provides,

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

In Clinton v. United States, 297 F.2d 899 (9th Cir. 1961), the Ninth Circuit Court of Appeals approved the

entry of an injunction under the All-Writs Act on facts similar to those of the case at bar. In Clinton, the court of appeals considered an appeal from a district court order that permanent enjoined the plaintiff from,

"continuing, commencing or prosecuting this or any other proceeding against [the defendant] in State or Federal Courts, or from relitigating or attempting to relitigate the same cause of action or any right, question of fact relating to the subject matter thereof, which was involved in the decisions of this court in [the prior case]."

Id. at 900. The court of appeals, in affirming the order of the district court, found that the injunction was a writ that was necessary and appropriate in aid of the district court's

jurisdiction and was properly entered under 28 U.S.C. §1651(a). Id. at 901. See also Lacks v. Fahmi, 623 F.2d 254, 257 (2nd Cir. 1980) (district court order entering a permanent injunction barring an individual from instituting any further lawsuits was affirmed because, in view of the individual's repeated institution of lawsuits in state and federal courts seeking the same relief, to which the individual was not entitled, and which actions were barred by res judicata and collateral estoppel, an injunction was proper under 28 U.S.C. §1651(a))

2. Equitable Jurisdiction

"It has long been settled that a court of equity may enjoin the institution of repetitious and baseless litigation." Rudnicki v. McCormack, 210 F. Supp. 905, 909 (D.R.I. 1962). After a

comprehensive discussion of the long history of equitable jurisdiction to enjoin vexatious litigation, the court in Rudnicki held that the inherent equitable powers of the Court, the power of the Court to supervise the orderly administration of justice, and the power of the Court to protect its own records include the power to enjoin repetitious and baseless litigation. Id.

In Meredith v. John Deere Plow Company of Molina, Illinois, 261 F.2d 121 (8th Cir. 1958), the Eighth Circuit court of Appeals considered a series of three lawsuits brought by the plaintiff pro se. Each lawsuit was based upon the same operative facts, but each set forth a different legal theory. In affirming the district court's order enjoining any further litigation relating to the subject matter of the three actions, the

court of appeals said that "the subjecting of another to repeated, baseless and vexatious suits at law on some particular subject matter is, without reference to other considerations, a sufficient ground for the issuance of an injunction against the perpetrator." Id. at 124 (emphasis added).

This Court clearly has the authority to enter an injunction to prevent duplicative and vexatious litigation under its inherent equitable powers and under the All-Writs Act, even without a showing that the typical criteria for entry of an injunction have been met. In view of the final judgments entered by this Court in the Graham I and Graham II cases and the baseless litigation brought by Craig Tweedy on behalf of Lillian Graham in the State Court Action,

an injunction against the Defendants is an appropriate and necessary remedy which is available to the Court and should be used to prevent further duplicative and vexatious litigation.

B. The Requirements for Entry of Preliminary and Permanent Injunctions Exist in this Case.

While the case law cited above supports the proposition that the prevention of repetitious, vexatious litigation alone provides sufficient basis for the entry of a permanent injunction, all of the typical requirements for the imposition of a preliminary injunction also exist in this case. A preliminary injunction may issue in the Tenth Circuit if the moving party establishes: (1) that there is a substantial likelihood that the movant will eventually prevail on the

merits; (2) that the movant will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweights whatever damage the proposed injunction, if issued, would not be adverse to the public interest. Otero Savings & Loan Assn. v. Federal Reserve Bank, 665 F.2d 275, 278 (10th Cir. 1981).

In the Complaint and Application, American Airlines, Inc. has asked the Court to consolidate the hearing on the application for a preliminary injunction with the trial on the merits. Assuming that these proceedings are consolidated under Fed.R.Cir.P. 65(a)(2), the requirement that American Airlines show substantial likelihood of prevailing on the merits is moot. In the event that the initial hearing and the trial on the merits are not consolidated, however,

American Airlines will demonstrate likelihood of success on the merits by reference to the allegations contained in pleadings filed by Craig Tweedy against American Airlines, Inc. since the judgments were entered in the Graham I and Graham II cases. A brief review of the pleadings and orders and judgments in the Graham I and Graham II cases and the Petition in the State Court Action will support the proposition that American Airlines is likely to succeed on the merits herein.

Unless a permanent injunction issues, American Airlines will suffer irreparable harm. The time and effort that has already been wasted by personnel of American Airlines in defending the ongoing litigation between the parties cannot be quantified. If an injunction is not entered, additional time and

effort will be wasted in defending the State Court Action, which time and effort can never be recovered. In addition, there is no measure of the harm to American Airlines' reputation which results from such baseless litigation. Finally, if the Defendants are allowed to continue to prosecute these actions, additional attorney fees will be incurred by American Airlines which will impose an irreparable financial burden on American Airlines. American Airlines will show at trial that in the event sanctions are awarded under Fed.R.Cir.P. 11 or other statutory or equitable authority to compensate American Airlines for the costs expended in defending the State court Action, it is extremely unlikely that any of the Defendants would be financially able to satisfy such an award.

American Airlines' injury outweighs any harm that a preliminary injunction could case to the Defendants. American Airlines seeks only to enjoin the Defendants from alleging and arguing "facts" that are contrary to this Court's final judgments in the Graham I and Graham II cases. The Defendants have no legal right to continue to plead and argue "facts" that they know to be false, by operation of law. There is no potential for injury to the Defendants. On the other hand, the harm to American Airlines which will result if it is forced to continue to relitigate issues that have already been decided is clear.

Finally, the public interest favors the entry of an injunction. It is in the public interest to prevent vexations litigation and to promote efficient use of judicial resources. Allowing the

court system to be clogged with duplicative litigation wastes judical resources and delays the administration of justice in genuine controversies.

C. It is Necessary that an Injunction Be Entered in this Case to Prevent Endless Litigation that Could Result in Multiple Appeals to the United State Supreme Court, and to Secure to American Airlines, Inc. The Benefit of this Court's Judgment.

The Defendants have demonstrated their willingness to ignore this Court's judgment and file multiple lawsuits concerning issues that were decided in the Graham I and Graham II cases. Under the foregoing authorities, this alone is sufficient justification for entering an injunction. However, there is greater justification when one considers the

potential for multiple appeals that could arise if this litigation is allowed to continue unchecked.

In the event that a judgment is entered in the State Court Action which conflicts with this Court's judgment in the Graham I and Graham II cases, American Airlines' avenue of an appeal would be to the Oklahoma Supreme Court. If the Oklahoma Supreme Court then affirmed the conflicting state court decision, American Airlines' appeal would be by petition for certiorari to the United States Supreme Court. See Parsons Steel v. First Alabama Bank, 474 U.S. 518, 525, 88 L.Ed.2d 877, 885, 106 S.Ct. 768 (1986) ("Parsons Steel"). If the supreme Court then chose not to review the case, the state court decision would stand, effectively denying American Airlines the benefit of this Court's

judgment in the Graham I and Graham II cases.

The Parsons Steel case stands for the proposition that federal courts should only enjoin state court proceedings in "those situations win which the state court has not yet ruled". Parsons Steel, 474 U.S. at 524. See discussion of the relitigation exception to the Anti-Injunction Act, Section II, infra. But it is clear that until the District Court of Tulsa County enters a conflicting judgment, this Court has the authority under the All-Writs Act to enjoin the State Court Action. Id.; See also Brooks v. Barbour Energy Corporation, 804 F.2d 1144, 1146 (10th Cir. 1986) ("we hold that a federal court can enjoin a state court proceeding adjudicating an action dealing with the same transaction or occurrence which was

the subject of the dismissed cause.") However, if a conflicting state court judgment on the res judicata issue is entered, the Full Faith and Credit Act, 28 U.S.C. § 1738, would then preclude this Court from enjoining the enforcement of the state court judgment, and, absent a successful appeal to the Oklahoma Supreme Court or reversal to the Oklahoma Supreme court on certiorari to the United States Supreme Court, American Airlines would be deprived of the benefit of this Court's judgment in the Graham I and Graham II cases. See Parsons Steel, 474 U.S at 524. For this reason, American Airlines is compelled to seek an order from this Court at this time, joining further prosecution of the State Court Action, in order to secure the benefit of the judgments in the Graham I and Graham II cases.

There is little doubt that a decision in favor of American Airlines in the State Court Action would be appealed by Craig Tweedy and his client to the Oklahoma Supreme Court and to the Supreme Court of the United States if necessary. Such multiplicity of appeals would result in virtually endless litigation between the parties, wasting the appellate courts' resources for years to come. The only effective means of preventing this flood of litigation is for this Court to enter an injunction prior to the entry of a judgment by the District court of Tulsa County.

II.

THIS COURT MAY ENJOIN STATE COURT PROCEEDINGS IN ORDER TO PROTECT AND EFFECTUATE ITS JUDGMENT UNDER THE RELITIGATION EXCEPTION TO THE ANTI-INJUNCTION ACT

The federal Anti-Injunction Act

generally prohibits federal courts from enjoining proceedings in state courts. However, it also provides certain exceptions to the general prohibition against enjoining proceedings in state courts. 28 U.S.C § 2283 provides,

"A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by aid of its jurisdiction, or to protect or effectuate its judgment."

Thus, Congress has expressly enumerated the circumstances under which a federal court can issue an injunction that affects state court litigation. The third exception is applicable to the case at bar. This Court may enjoin state court proceedings when such action is necessary to protect or effectuate this Court's judgments.

The "to protect or effectuate" exception to the Anti-Injunction Act is more commonly known as the "relitigation exception". The Fifth Circuit Court of Appeals in Woods Exploration and Producing Company v. Aluminum Company of America, 438 F2d 1286 (5th Cir. 1971), succinctly stated the gist of this exception: "The 'relitigation' principal . . . means simply that a federal court may enjoin a state court proceeding which is precluded under the doctrine of res judicata. Id at 1312. The court in Woods Exploration also provided the practical justification for the doctrine. The relitigation exception "prevents multiple litigation of the same cause of action and it assures the winner in a federal court that he will not be deprived of his victory by a later contrary state judgment which the Supreme

Court may or may not decide to review." Id.; See also Parsons Steel v. First Alabama Bank, 474 U.S. 518, 525, 88 L.Ed2d 877, 885, 106 S.Ct. 768 (1986) Brooks v. Barbour Energy Corporation, 804 F.2d 1144,1146 (10th Cir, 1986); Note, Federal Power to Enjoin State Court Proceedings, 74 Harv. L. Rev. 726, 734 (1961).

It has long been established in the Tenth Circuit that a federal court has the authority to enjoin relitigation in a state court of a matter litigated, determined, and adjudicated by the federal court's valid decree. In Berman v. Denver Tramway Corp., 197 F2d 946 (10th Cir. 1950), the court of appeals upheld a federal district court's entry of a judgment enjoining the plaintiff from relitigating in state court rate controversies which had been adjudicated

approximately twenty-five years earlier. The court of appeals reasoned,

"A federal court is clothed with power to secure and preserve to parties the fruits and advantages of its judgment of decree. In the appropriate exercise of that power, the court has jurisdiction through means of a supplemental proceeding to enjoin the relitigation in a state court of a matter litigated, determined, and adjudicated by its valid decreed regularly entered, if the result of the litigation would be to destroy the effect of the decree rendered in a United States Court. . . And for the purpose of protecting the effectiveness of its judgment or decree, a United States court may entertain an independent action rather than a supplemental proceeding in the original action to enjoin the relitigation in a state court of matters

already fully adjudicated in the United States Court."

Id. at 950.

Further, the proposition that federal courts have power to entertain an independent action as well as a supplementary proceeding in the original action to enjoin the prosecution of a state court action is well settled in the tenth Circuit. Id.; See also Jackson v. Carter Oil Company, 179 F.2d 524 (10th Cir. 1950), cert. denied, 340 U.S. 812, 71 S.Ct. 39, 95 L.Ed. 597.

In a case that parallels the case at bar, the Second Circuit Court of Appeals upheld the entry of an injunction enjoining the plaintiff from relitigating a prior action. In Browning Debenture Holders committee v. DASA Corporation, 605 F.2d 35 (2d Cir. 1978), the court permanently enjoined plaintiffs from

engaging in further harassing litigation against the defendant based on facts previously alleged by plaintiffs and claims previously adjudicated by district court. Like the case at bar, the defendants, in Browning Debenture filed a motion to dismiss the state court action on grounds of res judicata and also filed an application for an injunction in federal court. In opposition to defendant's application for an injunction, plaintiff maintained that the defendants would have adequate relief in the form of the state court's ruling on the motion to dismiss. The Second Circuit used the district court's own words to dispose of tha contention,

"In a case such as this, it would be a disservice not only to the defendants, but also the state judiciary to allow the entire record to be placed

in the lap of the New York state courts to be argued over by lawyers, puzzled over by judges, for years to come. While comity requires respect for the ability of the state courts to decide the issue of res judicata properly, it also requires sympathy for their calendar problems and for the task that would confront them were this litigation to be imposed upon them." Id. at 40.

In light of the foregoing authorities, there is certainly precedent for injunctive relief to the entered in the case at bar, where potential appeals from the State Court Action could result in multiple appeals to the United States Supreme Court. This Court should enter an injunction against the Defendats under the exception to the Anti-Injunction Act, in order to protect and effectuate its judgments in the Graham I and Graham

II cases.

III.

THIS COURT SHOULD AWARD JUDGMENT AGAINST DEFENDANT CRAIG TWEEDY UNDER 28 U.S.C. §1927 FOR THE COSTS OF DEFENDING THE STATE COURT ACTION

Congress has seen fit to provide statutory authority for district courts to require an attorney who unreasonably multiplies litigation to personally satisfy the excess costs, expense and attorney's fee reasonably incurred by the party who is the object of such attorney's unreasonable conduct. 28 U.S.C § 1927 provides,

"Any attorney or other person admitted to conduct cases in any Court of the United States or any Territory thereof who so multiply the proceedings in any case unreasonably and vexatiously may be required by the Court to satisfy personally the excess costs, expenses,

and attorneys' fees reasonably incurred because of such conduct."

While this power of the Court is penal in nature and must be strictly construed, it is a valid means by which the Court may impose sanctions to discourage dilatory litigation practices. See Braley v. Campbell, 832 F.2d 1504 (10th Cir. 1987) (citing Roadway Express, Inc. v. Piper, 447 U.S. 752, 764-67, 100 S.Ct. 2455, 2463-64, 65 L.Ed.2d 488 (1980); Morris v. Adams Millis Corp., 758 F.2d 1352, 1357, n.7 (10th Cir. 1985) (including discussion of legislative history of §1927 and inherent power of court to impose sanctions.) The proper standard under this statute for determining when excess costs, expenses or attorney fees should be imposed against attorneys personally is whether the attorney's conduct, viewed

objectively, manifests either intentional or reckless disregard of the attorney's duties to the court; bad faith is not necessary. Braley v. Campbell, 832 F.2d at 1512. It is especially appropriate to impose costs and attorney's fees as sanctions in situations where the doctrines of res judicata and collateral estoppel plainly preclude relitigation of decided issues, in order to deter and punish people who relitigate cases which are hopelessly foreclosed. McLaughlin v. Bradlee, 602 F.Supp. 1412, 1417 (D.C.D.C. 1985), aff'd, 803 F.2d 1197, 1205 (D.C. Cir. 1986) (citing Huattig & Schromm v. Landscape Contractors Council, 582 F. Supp. 1519, 1921 (N.D. Cal. 1984); Andre v. Merrill Lynch Ready Assets Trust, 97 F.R.D. 699, 702 (S.D. N.Y. 1983)).

In this case, it is appropriate that

the Court award judgment against Craig Tweedy for unreasonably and vexatiously multiplying the litigation between Lillian Graham and American Airlines. When the records of the Tulsa County Action and the Graham I and Graham II cases are considered together, it becomes apparent that Craig Tweedy and his client have simply refused to accept the judgment and fact finding of this Court, have disregarded this Court's judgments and have proceeded to attempt to relitigate issues which were finally decided in the Graham I and Graham II cases. Craig Tweedy has vigorously argued that the judgment in Graham I was obtained by fraud. However, the same issues were thoroughly considered and decided in Graham II, as well as being asserted in post-trial motions in Graham I. These matters must finally be put to

rest. Although sanctions are a drastic remedy, an award of attorney fees to American Airlines in this case may counsel Mr. Tweedy to give more respect to the judgments of this Court.

CONCLUSION

For the foregoing reason, this Court should enter judgment on behalf of American Airlines, Inc., awarding damages in the amount of the excessive attorney fees, costs and expenses incurred by American Airlines in defending the State Court Action, and entering a permanent injunction against Craig Tweedy and Lillian Graham, enjoining them from continuing the litigation between the parties or instituting any new litigation against American Airlines, Inc. or its affiliates, representatives, employees or agents, based upon any allegations of fact which are contrary to the

findings of this Court in the Graham I and Graham II cases, or which in any way complain about Graham's employment relationship with American or discharge of American.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC., Plaintiff,	)	Filed April 10, 1992
vs.	)	Case No. 91-C-762-B
CRAIG TWEEDY and LILLIAN GRAHAM, Defendants.	)	

MOTION FOR RECONSIDERATION, WITH BRIEF IN SUPPORT

The Defendants, Craig Tweedy and Lillian Graham, pursant to Rule 59, F.R.Civ.P., move the Court to justly, fairly and impartially reconsider and vacate the Order of March 31, 1992 and deny the injunctive Complaint of Plaintiff, American Airlines, Inc. ("American") for the reasons and grounds stated in the supporting brief.

BRIEF IN SUPPORT

PRELIMINARY STATEMENT

The Order of March 31, 1992 shows

the appearance or reality of judical partiality plainly acting to arbitrarily deprive Ms. Graham of her actual claim and right to be heard and, further, to deprive Craig Tweedy of his property right.

American's deceptive pleadings have operated to induce the Court to misapprehend, unjustly construe and effectively dismiss the actual/actionable Graham III fraud claim and enjoin a judicially created and inactionable claim as being vexatious relitigation. Just and impartial reconsideration will show that the actual Graham III claim for extrinsic fraud discovered is empowered by rules of law and is to be afforded the fair and meaningful right to be heard in State Court. It will show that said Order substantially deprived such claim and property rights of these

Defendants and should be vacated as being contrary to law, arbitrary and void.

The failure of such fair and impartial grant of relief will arbitrarily deprive Ms. Graham of her meaningful Due Process right to be fairly heard on her lawfully empowered and actual Graham III fraud claim by a partial tribunal acting without competent jurisdiction, and Craig Tweedy will be unfairly, arbitrarily and substantially deprived of his rights and property by sanctions imposed without due process of law.

Such unabated deprivations would affirm the appearance or fact of the judicial partiality asserted of record and shown by the arbitrarily created claim reformation exception to the Anti-Injunction Act and by the contraventions of the substantive

and procedural law protecting the right of the actual Graham III fraud claim, and would impose the renewed duty of recusal by Judge Brett of the Court.

If these substantial due process deprivations are not vacated by the exercise of the Court's sound duty and prescribed jurisdiction, an appeal would not offer adequate relief from the irreparable effects of the void injunction and sanctions. Such failure would require extraordinary relief.

A. THE CONTROLLING PRINCIPLES AND ANTI-INJUNCTION ACT APPLY DUE PROCESS PROTECTIONS TO THE GRAHAM III FRAUD CLAIM

(i). The Anti-Injunction Act Protects the Claim

A material part of the procedural and substantive protections of Ms. Graham's due process is derived from the Congressional intent of the

Anti-Injunction Act, 28 USC, §2283, as construed. "Protected interests in property are normally 'not created by the Consititution. Rather, they are created and their dimensions are defined' by an independent source such as state statutes or rules entitling the citizen to certain benefits," Goss v. Lopez (1975), 419 U.S. 565, 95 S.Ct. 729, at 735. The Act prohibits the Court's March 31, 1992 injunction against the prosecution of Ms. Graham's lawfully empowered right to be heard on her actual State Court, or Graham III fraud claim for extrinsic engine overhaul fraud discovered (Doc. 18, Exhibit A).

"In determining whether an injunction should issue, a court should resolve doubts against issuing the injunction * * and narrowly construe the Act's three exceptions" (emphasis

added), Brooks v. Barbour Energy Corp. (CA 10, 1986), 804 F2d 1144, 1146. Where an exception does not survive the doubts and narrow construction required, "the Act is an absolute prohibition to any injunction of any state-court proceeding," Vendo Co. v. Lekro-Vend Corp (1977), 97 S.Ct. 2881, at 2887.

However, the Court did not resolve the compelling doubts against the injunction, but showed an unfair predisposition to grant it by following American's deceptive pleadings. For example, the discovered extrinsic fraud of the 1985 engine overhaul plead by Ms. Graham as basing the Graham III fraud claim is not mentioned by American's injunctive pleadings (Doc. Nos. 1 & 2), nor by the Court March 31, 1992 Order construing such claim.

A most important protection of the

Act and requiring the Court to vacate the March 31, 1992 injunction is found in Chick Kam Choo v. Exxon Corp (1988), 486 U.S. 140, 108 S.Ct. 1684., at 1690. In Chick Kam Choo, at 108 S.Ct., at 1690, the Court expressed the controlling Anti-Injunction Act intent, as follows,

"thus, as Atlantic Coast Line (90 S.Ct. 1739, 1742) makes clear, an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from relitigation in state court proceedings actually have been decided by the federal court. Moreover, Atlantic Coast Line illustrates that this prerequisite is strict and narrow." (Paranthetical and emphasis added)

Chick Kam Choo operates to declare the Congressional intent to prohibit an injunction against the actual, new,

different and actionable State Court, or Graham III claim for the extrinsic 1985 engine overhaul fraud discovered. The Court did not enjoin the actual claim. However, a baseless and void injunction was arbitrarily issued against the Defendants.

Judge Cook heard and decided the issues at the Graham I Title VII trial. Judge Cook's decision of August 11, 1989 (Doc. 3, Exhibit A) does not mention American's 1985 overhaul of Ports of Call engine. More importantly, Judge Cook's Order did not find that the fact or pretext of such engine overhaul was challenged by an issue, claim or controversy raised and decided in Graham I.

Such Graham I decision based the Graham II res judicata findings and summary judgment by Minute Order of

September 20, 1990, as formally entered on January 21, 1991 (Doc. #3, Exhibit B) and noted at pages 4-5 of the Court's March 31, 1992 Order.

It is clear that Ms. Graham and the Graham I & II Court had accepted the pretext of the 1985 engine overhaul.

Under Chick Kam Choo, the Anti-Injuction Act protects and does not permit the Court to enjoin the actual State Court fraud claim. "A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creator." Stoll v. Gottlieb (1939), 59 S.Ct. 134, at 137. The Court was without injunctive jurisdiction.

The injunction against the Defendants prosecuting a different claim than plead is clearly arbitrary and was

rendered without competent jurisdiction and in substantial denial of the fairness, substantive and procedural due process protections.

(ii). Principles of Construction and Equity Protect the Graham III Fraud Claim.

American's injunctive pleadings (Doc. Nos. 1, 2 & 21) carefully avoid mention of the 1985 engine overhaul clearly plead by Ms. Graham as basing her Graham III claim for extrinsic fraud discovered. American's Brief (Doc. #2) commences with the weak and equivocal obfuscation that Graham III seeks to improperly relitigate "certain issues which were previously litigated" in Graham I & II. However, American does not specify how the Graham III fraud claim was an issue formally decided. Why so, except to mislead the Court and

secure the injunctive benefit of its engine overhaul fraud scheme requiring FAA complicity?

Extrinsic fraud is an exception to res judicata principles, "res judicata applies to repetitive suits involving the same cause of action * * absent fraud." Commissioner v. Sunnen (1948), 68 S.Ct. 715, at 719; Sea-Land Services v. Gaudet (1974), 414 U.S. 573, 39 Led2d 9, at 18; 1B Moore's Federal Practice, ¶0.405[1], page 180, and ¶0.407, pages 282-285.

It is the Court's duty to reconsider and protect the Graham III fraud claim by denying the benefit of American's extrinsic engine overhaul fraud and to do so by vacating the inequitable relief of the void injunction. This is so, because, "Equity abhors fraud and seeks to prevent and redress it where found *

* courts of equity will not assist one in extricating himself from circumstances which he created." State Ex Rel, Burke v. Oklahoma City (Okl. 1974), 522 P2d 612, at 619. "Equity will not lend itself to * * fraud and historically has relieved from it. It bars a defendant from setting up a fraudulent defense, as it interposes against other forms of fraud." Holmberg v. Armbrecht (1946), 327 U.S. 302, 66 S.Ct. 582, 585.

Additionally, such injunction is to be denied, if it will "be adverse to public interest." Otero Sav. & Loan v. Federal Reserve Bank (CA 10, 1981), 665 F2d 275, at 278. As will the taint of unclean hands deny injunctive relief. National Fire Ins. Co. v. Thompson (1930), 281 U.S. 331, 338, 50 S.Ct. 228. What is the fraud actually alleged, if

not unclean and against public interests?

Under such principles, the Court has the duty to apply the narrow Brooks restriction against the Complaint and March 31, 1992 injunction, which Order is further disempowered by Chic Kam Choo.

Moreover, American's pleading equivocations and obfuscations further impose the Court's duty to reconsider and vacate the issued injunction, under another rule favoring and protecting the actual Graham III fraud claim. Under the Anti-Injunction Act, "the party seeking the injunction must make a 'strong and unequivocal showing' of relitigation," Delta Air Lines, Inc. v. McCoy Restaurants, Inc. (CA 11, 1983), 708 F2d 582, at 586, citing, In re Corrugated Container Antitrust Litigation (Three J Farms, Inc. v. Plaintiffs' Steering Committee), 659 F2d 1382, 1334

(5th Cir. Unit A 1981), cert. denied, 456 U.S. 936, 102 S.Ct. 1993, 72 LEd.2d 456 (1982); Southern California Petroleum v. Harper, 273 F2d 715, 719 (5th Cir. 1960).

Thus, under the Brooks and Delta Air rules of construction, the Court has a duty to consider the actual Graham III fraud claim to be immune from American's pleadings. Such pleadings are not "strong and unequivocal," but weak, equivocal, unclean, deceptively intended. Such affirmative duties of the Court to deny the evasive Complaint merge with the mandate of Chick Kam Choo. The failure of the 1985 engine overhaul to have been an issue "actually" decided in Graham I & II operates to show the March 31, 1992 injunction to be baseless and without jurisdiction, under the Anti-Injunction Act.

These accepted rules and authorities provide the procedural and substantive due process protections to be afforded the actual Graham III fraud claim by the Court, but deprived by the arbitrary injunction, which must be vacated.

(iii). The Court Acted Without Authority to Create and Enjoin a Claim not Stated by Graham III.

The Court, by its Order of March 31, 1992, denied additional procedural protections. The Court was wholly without authority to unjustly use Rule 8 powers to misconstrue and deprive the State Court action of its lawful and actionable existence.

Said Order construed one of the lawful damage effects of the actual claim of extrinsic 1985 engine overhaul fraud as constituting an improper claim seeking to relitigate the 1985 turbine disc

damage issue decided in Graham I. In affect, the Court acted with a prejudiced predisposition to construe the actual claim unfairly in favor of American.

In so doing, the Court plainly acted without judicial authority and in a manner contrary to the substantial justice required of Rule 8(f), F.R.Civ.P., by arbitrarily acting to misconstrue, amend or dismiss the actual Graham III fraud claim.

The Rule 8(f) substantial justice required of the Court in construing the Graham III fraud claim was and is to, "make a determined effort to understand what he (the plaintiff) is attempting to set forth and to construe the pleading in his favor, whenever justice so requires (Paranthetical added)." Wright & Miller, Construction of Pleadings, §1286, Rule 8, pages 549-553, citing

Misco Leasing, Inc. v. Keller (CA 10, 1974), 490 F2d 545, and Bachman v. Seaboard Air Line R. Co. (D.C. S.C. 1948), 68 F.Supp. 976. The procedural and substantive principles and protections mentioned in this brief compose the substantial justice required, but not followed by the Court in construing the Graham III fraud claim or American's pleadings..

The Rule 8 gist of what this Court did wrong by selectively editing the actual Graham III fraud claim in favor of American is addressed on all fours in Bachman v. Seaboard Air Line R. Co., supra, as follows.

"In construing a pleading, the Court must look to the substance of the entire pleading. It will not do to take the words used in one part of the complaint and, by separating them from the context

and considering them without reference to the complaint as a whole, to draw from them an inference favorable to the defendant's theory, which is opposed to the one deduced from a reading of the whole complaint, and the one that the pleader has in mind in framing it." (Emphasis added)

The Court arbitrarily did the opposite of the just Rule 8 requirement, as justly and logically explained by Bachman.

The Court's March 31, 1992 Order made a quantum claim reformation leap over the Anti-Injunction Act and controlling principles. In construing Graham III, as above mentioned, the Court made no mention of the 1985 engine overhaul expressed as basing the wrong of such fraud claim. Nor did the Court mention the 1990 criminal investigation

exposing FAA complicity in the concealment of such extrinsic fraud operating to deny her fair and full opportunity to litigate her rights in Graham I & II.

What the Court's Order of March 31, 1992 did was to select certain words out of context to the stated meaning of wrong of the engine overhaul fraud claim. The Court then found and construed those words in favor of American by concluding that Defendants were improperly.

"seeking to litigate . . the issue whether or not Graham damaged a 4th stage turbine disk owned by a firm call Ports of Call (Page 1) * * (alleges that) Defendants "fraudulently represented" that Graham damaged the Ports of Call 4th stage disk in 1985 and "fraudulently concealed" the fact that the disk had been overhauled in 1982 and not in 1985

(Page 7) * * the gravemen of Graham's pending state court proceeding is that the repair of, and therefore the damage to, the 4th stage turbine disk of the Ports of Call engine occurred in 1982 and could not have occurred in 1985 as found by Judge Cook in Graham I (Page 10) * * clearly vexatious (Page 12)."

The Graham III fraud claim is restated, in pertinent part, in the sub-proposition below. However, it is here pointed out that the Court misapprehended such actual Graham III fraud claim by keying to the lawful affects of such claim as being the claim. Such lawful effects of denying the Graham III defendants of their extrinsic fraud are permitted by the controlling res judicata and independent action authorities, as cited in this brief.

The extrinsic fraud of the

non-occuring 1985 engine overhaul simply means, under Chisholm v. House, infra, that the Graham III Defendants may be deprived of the benefit of the lawfully exposed effects of the disc charge, the forged records and perjury forming part of the means of the unlawful plan against Ms. Graham and carried out in Graham I & II. Such plan required the 1985 engine overhaul pretext and FAA complicity. Such affects of the engine overhaul fraud are relevant to the Graham III issues of damage and malice, but do not constitute the claim clearly stated and intended by Ms. Graham.

Against due process, the Court created, by judicial fiat, a legally moot and hypothetical claim favorable to American, but not intended by Ms. Graham, as a attempted relitigation exception to the Anti-Injunction Act and Chick Kam

Choo. The Court then enjoined the Defendants from prosecuting such hypothetical claim by deeming it to be an improper and vexatious attempt to relitigate the adversely decided Graham I issue of 1985 turbine disc damage.

In so doing, the Court created a moot exception to the Act as an injunctive base. The Court is unempowered to act on a moot or "hypothetical controversy," Deposit Guarantee Nat. Bank, Etc., v. Roper (1980), 445 U.S. 326, 100 S.Ct. 1166, 1172: Wiley v. Nat. Collegiate Athletic Ass'n (CA 10, 1979), 612 F2d. 473, 475.

Contrary to the Holmberg and Sunnen edits against fraud, the Court provided American with the benefit of its extrinsic engine overhaul fraud by converting one of the affects of the Graham III fraud claim into a different,

improper and vexatious claim, as further shown below.

The arbitrary, powerless and moot injunction against the Defendants must be impartially reconsidered and vacated.

(iv). The Graham III Fraud Claim is Actionable and Must be Recognized by This Court.

The Graham III petition (Doc. 18, Exhibit A) and its actual fraud claim, ¶¶3-5, are restated in pertinent part, as follows,

"4. Commencing in June of 1985, the Defendants acted * * * to fraudulently conceal from Ms. Graham the material fact that the Pratt & Whitney JT3 jet engine under S/N 644980 had last been overhauled in 1982, and the material fact that said engine was not overhauled in 1985, and the material fact that its turbine disc under S/N 9B6198 was removed, damaged,

scrapped and not reinstalled in said engine after the last overhaul of American's two back-to-back 1982 overhauls of said engine, and the Defendants fraudulently represented that said engine was overhauled by American in 1985 for the intent and purpose of inducing Ms. Graham to accept, rely and act upon such underlying fact pretext and to wrongfully and maliciously injure Ms. Graham and her rights. In support of such 1985 engine overhaul pretext, the Defendants generated personnel and maintenance records and charges to show Ms. Graham's work on said disc during the purported 1985 overhaul of said engine, and the Defendants have actively concealed the underlying fraud of the 1985 engine overhaul pretext in a continuous and uninterrupted manner, and such fraudulent concealment required and

has received the active concert of others, including the FAA. And in * * *

5. Ms. Graham knew that she had not worked on a disc removed from said engine in 1985, but accepted, relief upon and acted in good faith upon Defendants' representations of the underlying 1985 engine overhaul, all to her considerable personal, emotional and economic detriment. Ms. Graham progressively challenged the validity of the maintenance records produced by the Defendants for said 1985 engine overhaul and exercised due diligence to locate and secure the actual records for said 1985 engine overhaul, until November-December, 1990. Ms. Graham's former acceptance of the material and underlying misrepresentations of said 1985 engine overhaul, as induced by the Defendants,

operated to materially assist the Defendants' wrongful plan to injure and to defeat her personal and employment rights * * ."

By Graham III, Ms. Graham clearly states that she relied in good faith upon fraudulent inducements of the 1985 engine overhaul to her detriment. It is clearly stated that she did not rely upon representations of the disc charge and records for said engine overhaul, but diligently searched for the actual FAR required maintenance records for the 1985 release of said of engine to flight use.

The claim reformed by the Court as relitigating the disc charge would not be actionable, because of her lack of reliance upon the disc charge.

However, the actual Graham III fraud claim states the required elements for an actionable fraud claim under Oklahoma

law, as such elements are expressed in Tice v. Tice (Okl. 1983), 672 P2d 1168, at 1171, as follows,

"Actionable fraud consists of a false material representation made as a positive assertion which is known to be false, or made recklessly without knowledge of the truth, with the intention that it be acted upon by a party to his/her detriment. * * The basis of fraudulent misrepresentations is the creation of a false impression and damage sustained as a natural and probable consequence of the act charged." (Emphasis added)

See, Morgan v. Graham (CA 10, 1956), 228 F2d 625, 54 ALR2d 1290, at 1296.

(v). The Independent Action Must be Recognized.

The actual Graham III fraud claim is empowered as an independent action.

Where extrinsic fraud of a material nature is discovered, an independent action "operates upon matters pertaining not to the judgment, but to the manner is which it was procured," Chisholm v. House (CA 10, 1947), 160 F2d 632, at 643. Such action deprives the wrongdoer of the benefit of his extrinsic fraud used in securing the judgment, without seeking to invalidate the judgment, and without res judicata preclusion. Hood v. Hood (CA 10, 1964), 335 F2d 585, 589-591; Salvation Army v. Morris (CA 10, 1970 421 F2d 805, 807; 7 Moore's Federal Practice, ¶60.36, page 60-368; 1B Moore's Federal Practice, ¶0.407, pages 283-286.

The extrinsic fraud of the 1985 engine overhaul constitutes a different claim from the Graham I & II issues and res judicata does not apply. As above cited, "[R]es judicata applies to

repetitive suits involving the same cause of action * * absent fraud." Commissioner v. Sunnen (1948), 68 S.Ct. 715, at 719; Sea-Land Services v. Gaudet (1974), 414 U.S. 573, 39 Led2d 9, 18; 1B Moore's Federal Practice, ¶0.405[1], page 180, and ¶0.407, pages 282-285.

The active fraud concealment was extraordinary. Graham III, at ¶¶ 15-16, states that only because of a 1990 criminal investigation of FAA misconduct with American in Graham II engine records discovery, conducted by the Office of Inspector General, United States Department of Transportation, did she discover that the actual records of the 1985 engine overhaul did not exist to be secured, because such 1985 engine overhaul did not happen.

The Court has a duty to deny to American the benefit of the extrinsic

engine overhaul fraud operating to deny her fair and full opportunity in Graham I & II to litigate her claims and protected rights, under the accepted principles. Restatement of Law, Judgments 2d, §§70 & 28(5)(c). Extrinsic fraud is excepted from the protection of res judicata. Commissioner v, Sunnen, supra; 1B Moore's Federal Practice, Res Judicata, ¶0.407, pages 282-285, and "0.405[1], page 180.

The Court has an affirmative and impartial duty to recognize the right of Ms. Graham's actual independent action for extrinsic 1985 engine overhaul fraud discovered, and to vacate the void injunction and substantial due process deprivations.

(vi). The Stare Decisis Effects of the Order of February 27, 1991 Apply the Bar of the Anti-Injunction Act.

Compliance with the above cited and controlling res judicata and independent action principles against providing the benefit of extrinsic fraud is presumed in Judge Cook's final Order of February 27, 1991 in Graham I. The "presumption" exists that such final Order acted "justly" and "correctly" in comformity to law. 46 Am Jur 2d, §28, pages 332-333, citing Robinson v. Fair, 128 U.S. 53. The stare decisis effect of said final Order "is binding on the court that decided it and such other courts as owe obedience." 1B Moore's Federal Practice, ¶0.402[1], page 5.

As pointed out in Defendant's March 30, 1992 Supplemental, received by the Court with Application (Doc. 26), Judge Cook's Order of February 27, 1991 operates to defeat the Complaint and require the March 31, 1992 injunction to

be vacated. As is clear from the record, Judge Cook heard the evidence and decided the Graham I issues basing the September 20, 1990 res judicata decision in Graham II.

American carefully avoided mention not only of the 1985 engine overhaul. American's pleadings avoided mention of another crucial Graham I record fact. That is, that Ms. Graham first brought the same claim (Motion, Exhibit "A" hereto) of discovered extrinsic engine overhaul fraud upon her rights to this Court on December 24, 1990. Such claim sought direct equitable relief from the extrinsic fraud unfairly depriving her rights and securing the Graham I and, consequently, Graham II judgments.

By the Order of February 27, 1992, Judge Cook refused to hear such same claim, but did not, and could not justly,

deny such claim of extrinsic fraud discovered on the basis of the accepted res judicata exceptions to such extrinsic fraud, as such principles are cited in this brief.

Judge Cook gave proper Chisholm v. House recognition to the property interests of her new and different claim against such extrinsic fraud, by the Court's Order of February 27, 1991, now final. Judge Cook did so, by refusing to hear such claim of extrinsic fraud discovered upon her rights as being "untimely" filed beyond the one-year time limit of Rule 60(b). (Order, 2/27/91, Exhibit "B" hereto).

Such claim was proper as an independent action, under Chisholm v. House, but "untimely" to be heard as a direct attack by this Court. Thus, Ms. Graham had a protected right to be fairly

and fully heard on such claim in State Court, where it could be timely filed within two years of discovery, under Title 12, Okl. St. Section 95(3). Such right to be heard has been arbitrarily denied by the void and moot injunction of March 31, 1992.

Again, under Chisholm v. House and other cited authorities empowering the actual Graham III fraud claim, such independent action does not seek or need to relitigate issues decided in Graham I & II. The prohibited affects of the forged records, disc charge and perjury relating to such non-existing 1985 engine overhaul merely serve as just and relevant evidence of damages and malice.

The Court is urged to comply with the legal meaning and stare decisis effects of the final Order of February 27, 1991, plus the controlling principles

permitting relief from extrinsic fraud, as having "binding" and controlling affect that Graham III does not constitute a valid relitigation exception to the Anti-Injunction Act.

B. THE ARBITRARY MANNER OF REACHING THE INJUNCTION ISSUED PLAINLY SHOWS A FAILURE OF JUDICIAL NEUTRALITY AND VIOLATION OF THE DUE PROCESS CLAUSE.

Considering the above analysis, the Court's Order of March 31, 1992 is moot, void and unconstitutional. Support for such statement is found in the authority of V.T.A., Inc. v. Airco, Inc. (CA 10, 1979), 597 F2d 220, in which such Court, at 224-5, defines a judgment being void on the grounds of,

"Lack of subject matter jurisdiction * * It may also arise if the court's action involves a plain usurpation of power or if the court has acted in a

manner inconsistent with due process of law."

Each of such three extraordinary V.T.A. grounds speak directly to the void nature of the Court's arbitrary creation of a moot relitigation exception to the Anti-Injunction Act, under the authorities analyzed in this brief.

Moreover, the Order of March 31, 1992 shows the strong appearance of an unfair and biased judicial predisposition to rule in favor of American and/or rule against the Defendants, notwithstanding the controlling substantive and procedural law protecting Graham III. Such appearance would be absolutely affirmed as a fact of judicial partiality, if the injunction is not justly and impartially vacated.

"Moreover, even if there is not showing of actual bias in the tribunal, *

* due process is denied by circumstances that create the liklihood or appearance of bias." Peters v. Kiff (1972), 407 U.S. 493, 92 S.Ct. 2163, at 2168.

The mandate to vacate said Order and injunction also derives from the judicial neutrality and other central requirements of due process, as expressed in the civil penalties case of Marshall v. Jerrico (1980), 446 U.S. 238, 100 S.Ct. 1610, at 1613, as follows,

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in

the decisions making process. (citations omitted)

The neutrality requirement helps to guarantee that life, liberty or property will not be taken on the basis of erroneous or distorted conception of the facts or the law. (citations omitted)

At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done, by assuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." (citations omitted) (emphasis added)

The appearance of judicial failure of neutrality, predisposition to rule against Ms. Graham, and a "distorted

conception of the facts or the law" is clear from the March 31, 1992 injunction. Marshall v. Jerrico and V.T.A. provide the mandate of duty for the Court to justly reconsider and declare the March 31, 1992 Order to be wholly void for its due process deprivations, even before being so pronounced.

(i). The Option of Judge Brett's Recusal.

If the Court is not inclined to comply with the due process fairness requirements, a reasonable and proper alternative exists. The Defendants urge the recusal of Judge Brett of the Court. Judge Brett may and should justly and reasonably reconsider the interlocutory Orders of December 27, 1991 (Doc. 15) and January 9, 1992 (Doc. 19) denying the Defendants' motion and affidavit requests for his recusal, and recuse himself from

this case. Such judge should reasonably consider that he may be unable or unwilling to perceive his partiality resulting in the substantive and procedural due process deprivations of the Defendants' rights.

Subtle judicial partiality is shown by Judge Brett's unfair observation, at pages 11-12 of said Order, that Ms. Graham had not completed an adverse appeal from Graham I or II and conclusion that her "three lawsuits are clearly vexatious." By so doing, Judge Brett does not mention the Graham I record showing that Ms. Graham lodged an appeal from the original Graham I Judgment of August 11, 1989 in Appeal Case No. 89-5159, but that such appeal was dismissed because of her financial inability to complete the trial transcript; nor does he mention that the

res judicata and summary judgment Minute Order of September 20, 1990 terminated Graham II, without a formal Judgment entered until February 21, 1991; nor mention the intervening discovery and December 24, 1990 Rule 69(b) Motion urging relief from the 1985 engine overhaul fraud in Graham I and that Appeal No. 91-5060, taken from the adverse procedural decision of February 27, 1991, was dismissed on January 17, 1992 (Doc. 17), because of American's misuse of such appeal in this injunctive case and in securing the State Court stay of Graham III.

Judge Brett biasly ignored the significant 1990 criminal investigation operating to expose the extraordinary FAA complicity in the concealment of the extrinsic engine overhaul fraud discovered. Such FAA complicity

in the extrinsic fraud unfairly operated materially to the unfair denial of Ms. Graham's due rights in Graham I & II. In spite of such extraordinary fraud alleged and empowering Graham III, Judge Brett unjustly "distorted" the Graham III pleadings to provide American the benefit of such discovered fraud, whether or not intended.

Justly, fairly and impartially, Judge Brett should have pointed the finger of blame for the new Graham III litigation at American. In effect, Judge Brett faulted the Defendants for persisting in looking for the actual records of the accepted 1985 engine overhaul, which FAR required records had to exist, when the engine was released to flight. The judge unfairly faulted their diligence, after being successfully deceived.

In said Order, Judge Brett mentioned the March 15, 1992 hearing at which Jack J. Burke was allowed to testify as an aviation expert and offer his affidavit support of the Graham III claim being genuinely based, under the Court's ruling that the fact evidence would be decided on the merits. Then over objections of relevance, Judge Brett permitted the participants in the scheme alleged, Dennis Quish and George Barton, to testify. Judge Brett unfairlly noted in said Order, at page 7, that Quish and Barton "established and proved" Ms. Graham's 1985 damage to the Ports of Call disc. He did so in spite the testimony and the Defendants' January 21, 1992 Brief and exhibits (Doc. 24) showing that Barton and Quish gave false and conflicting testimony operating to confirm Mr. Burke's testimony and the

Graham III allegations.

In said Order, at page 13, Judge Brett provided the footnote and attached the successful results of his similar bias and judicial usurpations. Judge Brett referred to the trial court and appellate sanctions against Craig Tweedy for vexatious litigation in Burggraf v. Goodyear, Appeal Case No. 90-5091 and this Court's No. 82-C-1177. In such matter, Tweedy did not originally perceive and address Judge Brett's predisposition to judicial fiats. In such case, due process deprivations occurred by Judge Brett indirectly dismissing the actual Burggraf damage claims and case and entering a Rule 41(b) dismissal for failure to prosecute the judicially created, empty and unactionable appearance of a claim for trial. The normal appeal taken was

viewed as improper and not considered by *Tenth Circuit* Court, nor subsequently reconsidered. Such history will not now be repeated.

The duty of Judge Brett to recuse is more than reasonably warranted.

CONCLUSION

Under the controlling principles and Anti-Injunction Act, the Court has a sound duty to recognize that the Order of March 31, 1992 is plainly wrong and exceeded the Court's subject matter jurisdiction and authority. The Court deprived the Defendants of the substantive and procedural protections of the Due Process Clause protecting the actual Graham III fraud claim and their property rights and interest. Such duty and mandate could not be more plain and clear, under current law and the Due Process Clause.

RESPECTFULLY SUBMITTED,

s/ Craig Tweedy
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CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC.) Plaintiff,	)	Filed
	)	May 30, 1992
v.	)	
	)	No. 91-C-762-B
CRAIG TWEEDY, et al,	)	
	)	
Defendants.	)	

AMENDED REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

Plaintiff American Airlines, Inc. now asks that this Court order Defendant Craig Tweedy to pay for excess costs, expenses and attorney fees reasonably incurred as a result of this litigation (See docket #30). (fn 1: "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion or order or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjuction with the docket

sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.) A hearing on American's motion was held before the United States Magistrate Judge on April 28, 1992. However, neither Tweedy or a representative for Tweedy appeared at the hearing. In addition, no response was filed to American's motion.

As a result, the United States Magistrate Judge recommends that this Court should grant American's request for $36,421.01 in attorney fees, as well as costs in the amount of $3,912.01, for an aggregate award against Tweedy of $40,333.01. (fn 2: This amendment is made to correct a scrivener's error, originally reciting the sum of $3,912.01 instead of $36,421.01 as is now set forth).

Any objections to this Report and

Recommendation must be filed with the Clerk of Courts within ten (10) days of the receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. (fn 3: See Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

Dated this 29th day of May, 1992.

JEFFREY S. WOLFE

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC.,	)	
	)	Filed
Plaintiff,	)	Jun 15,1992
	)	
v.	)	
	)	No.
CRAIG TWEEDY and	)	91-C-762-B
LILLIAN GRAHAM,	)	
	)	
Defendants.	)	

MOTION FOR CITATION OF
CONTEMPT FOR FAILURE TO OBEY
INJUNCTION AND FOR
ADDITIONAL MONETARY SANCTIONS,
WITH BRIEF IN SUPPORT

The Plaintiff, American Airlines, Inc. ("AMERICAN"), hereby moves the Court for an Order citing the Defendants, Craig Tweedy ("TWEEDY") and Lillian Graham ("GRAHAM"), for contempt for their failure to abide by the federal rules and orders of this Court, particularly the Court's March, 1992 injunction order. In support hereof, AMERICAN submits the following brief.

BRIEF IN SUPPORT

1. On March 31, 1992, the Court entered an Order specifically enjoining TWEEDY and GRAHAM from (i) "proceeding further" in the action styled Lillian A. Graham v. American Airlines, Inc., George Barton, Buck Williams and Wayne Ping, Agent for the United Transport Workers Union of American Airlines, Inc., CJ-91-4125, District Court, Tulsa County, State of Oklahoma (hereinafter referred to as "Graham III") and (ii) "from instigating, against AMERICAN and those parties privy thereto to the claims and issues herein, any further action or proceeding, in either state or federal court or any court or administrative tribunal, on these same claims and/or issues" (p.4).

2. Since the March 31, 1992 injunction, Defendants TWEEDY and GRAHAM have nevertheless wholly failed and

neglected to obey, comply with, and carry out the provisions and requirements of such judgment, and have wrongfully refused to do so. In this regard, Defendants have committed the following acts which violate the injunction,

> "(a) Defendants' Second Motion for Reconsideration. On May 27, 1992, TWEEDY and GRAHAM filed an improper Second Motion for Reconsideration of the March 31, 1992 Order which is not permitted by the rules and which, characteristically, simply reargues and realleges matters already argued, considered and rejected several times before. (fn 1: TWEEDY and GRAHAM's initial Motion for Reconsideration (filed April 10, 1992 was denied by this Court's Order of May 20, 1992. In its May 20, 1992 Order [p.2], the

Court stated, in pertinent part: "The Court concludes Defendants' Motion and supporting Brief essentially re-urges and re-argues the same issues and arguments presented by these Defendants in earlier pleadings. . . . The Court, as the Honorable Wayne Alley recently observed, is not just 'hitting fungoes' when it enters an Order")

(b) Defendants' Second Petition for Mandamus. On May 28, 1992, TWEEDY and GRAHAM filed a Second Petition for Mandamus, 92-5107, in the Tenth Circuit Court of Appeals which is patently frivolous and is an obvious improper attempt to reurge the earlier Petition for Writ of Mandamus and Prohibition, 92-5011, and to substitute the

Mandamus petition for an appeal from the March 31, 1992 Order. (fn 2: A mandamus action is an "original action, as distinguished from an appeal." 52 Am.Jur.2d Mandamus §4. By virtue of Rule 21(b), Federal Rules of Appellate Procedure, AMERICAN is deemed to be an additional respondent to TWEEDY's and GRAHAM's Second Petition for Mandamus, 92-5107. Consequently, the instigation of TWEEDY's and GRAHAM's Second Petition for Mandamus on May 28, 1992, constitutes a willful violation of the Court's March 31, 1992 Order.) (c) Defendants' Motion to Stay. On June 1, 1992, TWEEDY and GRAHAM filed an obviously frivolous Motion to Stay in this Court requesting that the Court stay

all proceedings in this matter pending decision of the Tenth Circuit Court of Appeals in the Second Petition for Mandamus, 92-5107.

The conduct of TWEEDY and GRAHAM, in filing these repetitive, duplicitous, and frivolous pleadings, is clearly vexatious. Such conduct evinces an intent by TWEEDY and GRAHAM to evade and ignore the Court's March 31, 1992 Order. The refusal of TWEEDY and GRAHAM to obey the Court's March 31, 1992 Order is calculated to impair, defeat, impede and prejudice the rights of AMERICAN, in that TWEEDY and GRAHAM will not cease their relitigation and reargument of the same claims and issues which the Court found to have been decided against them in prior litigation. The determination of whether an injunction has been violated

requires an examination of the language fo the Court's order, as well as "the objects for which the relief was granted." John B. Stetson Co. v. Stephen L. Stetson Co., 128 F.2d 981, 983 (2nd Cir., 1942). See also Polk v. Standard Business Forms, Inc., 270 F.Supp. 147, 156 (W.D. N.Car., 1967) ("in deciding whether an injunction has been violated it is proper to observe the objects for which the relief was granted and to find a breach of the decree in a violation of the spirit of the injunction, even though its strict letter may not have been disregarded"); United States v. Christie Industries, Inc., 465 F.2d 1002, 1007 (3rd Cir., 1972) ("language of an injunction must be read in light of the circumstances surrounding its entry: the relief sought by the moving party, the evidence produced

at the hearing on the injunction, and the mischief that the injunction seeks to prevent.") The purpose of the court's March 31, 1992 Order was clear, i.e., to declare an end to the Graham litigation, and to stop the steady stream of repetitive, frivolous filings which has become Defendants' hallmark.

Since the March 31, 1992 Order, AMERICAN has been forced to expend additional sums to enforce the injunction and respond to TWEEDY's meritless and vexatious filings. AMERICAN has expended another $5,598.25 in fees for which the Court should grant AMERICAN judgment against TWEEDY. The affidavit of AMERICAN's undersigned counsel of record, itemizing and setting forth these additional fees, is attached hereto, marked Exhibit "A", and is incorporated by reference herein.

Moreover, it is becoming apparent that monetary sanctions alone do not deter TWEEDY and GRAHAM, and that harsher penalties should be imposed against TWEEDY and GRAHAM to compel them to cease the relitigation of this matter. (fn 3: The District Court and Tenth Circuit Court of Appeals have previously awarded costs to AMERICAN, and have found that monetary sanctions should be imposed against TWEEDY and GRAHAM on several occasions in connection with their prosecutions of this claim. For example, in "Graham I" (case no. 86-C-516-C), AMERICAN was awarded $14,040.60 in costs against GRAHAM. In "Graham II" (case No. 89-C-815-P), AMERICAN recovered $5,087.55 in costs against GRAHAM. In "Graham IV" (the instant case), AMERICAN recovered another $3,877.70 in costs against

GRAHAM, and on May 29, 1992, the Magistrate recommended that AMERICAN recover $40,333.01 in attorney fees and expenses, as a sanction against TWEEDY.) See, Scott v. Hunt Oil Co., 398 F.2d 810 (5th Cir., 1968) (a district court's contempt order, which directed the plaintiff to be imprisoned for 6 months or until such time as she dismissed a suit pending in a state court that had been filed contrary to previous order enjoining and prohibiting her from further legal proceedings, was not an abuse of the Court's discretion). A similar conditional order of imprisonment should be entered against TWEEDY and GRAHAM, in view of their obvious indifference to the rules and orders of this Court, and the apparent ineffectiveness of monetary awards or economic sanctions.

AMERICAN requests that after notice and hearing to TWEEDY and GRAHAM, that they be adjudged in contempt of the March 31, 1992 Order, and that they be sanctioned and punished accordingly, including the imposition of fines and imprisonment.

Respectfully submitted,

s/ Reuben Davis

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CERTIFICATE OF MAILING

Supreme Court, U.S.
FILED
FEB 19 1993
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No. 92-1070

In The
Supreme Court of the United States
October Term, 1992

IN RE CRAIG TWEEDY,

Petitioner.

**On Petition For Writ Of Mandamus
To The United States Court Of Appeals
For The Tenth Circuit**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

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OR CALL COLLECT (402) 342-2831

ISSUES PRESENTED IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

1. The Petition for Writ of Mandamus should not be granted. Petitioner's papers do not meet the requirements of Rule 20.1, Rules of the Supreme Court, that in order to justify the granting of the Writ, (i) the Writ will be in the aid of the Court's appellate jurisdiction, (ii) there are present exceptional circumstances warranting exercise of the Court's discretionary powers, and (iii) adequate relief cannot be obtained in any other form or from any other Court.

2. The Petition for Writ of Mandamus should be denied. The subject matter described in the Petition, relating to a March 31, 1992 injunction entered by the District Court enjoining Petitioner from relitigating issues already decided below, is the subject of a *pending* appeal before the United States Court of Appeals for the Tenth Circuit, styled *American Airlines, Plaintiff-Appellee, v. Craig Tweedy, Defendant-Appellant,* Appeal No. 92-5159. Mandamus should not be used as a substitute for appeal.

3. The Petition for Writ of Mandamus should be denied. A mandamus action is not the proper vehicle to relitigate the already closed issues decided in *Graham I, Graham II* and *Graham IV*.

LIST OF INTERESTED PARTIES

Respondent, American Airlines, Inc., is a wholly-owned subsidiary of AMR Corporation, a publicly-traded Delaware corporation with its principal place of business in Texas. American has no non-wholly owned subsidiaries.

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No. 92-1070

In The

Supreme Court of the United States

October Term, 1992

IN RE CRAIG TWEEDY,

Petitioner.

On Petition For Writ Of Mandamus To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

The Respondent, American Airlines, Inc. respectfully prays that this Court deny the Petition for Writ of Mandamus.

JURISDICTION

A Petition for Writ of Mandamus was filed by Craig Tweedy pursuant to 28 U.S.C. § 1651(a). The Respondent, American Airlines, Inc. ("AMERICAN"), received a copy of the Petition for Writ of Mandamus on December 17, 1992, and this Brief in Opposition is timely filed as provided by Rule 20 of the Rules of the Supreme Court of the United States.

STATEMENT OF THE CASE

The Petition for Writ of Mandamus is the latest installment in what has become known in the Courts below as the *"Graham Litigation."* This litigation originated when one Lillian A. Graham ("GRAHAM"), a female aircraft mechanic and former employee of AMERICAN, sued AMERICAN for sex discrimination and harassment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* The Petitioner, Craig Tweedy ("TWEEDY"), acted as GRAHAM's attorney of record in the *Graham Litigation*. With the filing of the instant action, the *Graham Litigation* consists of no less than seven (7) separate actions, tabulated as follows:

- *"Graham I"* is *Lillian Graham v. American Airlines, Inc.*, Case No. 86-C-516-C, U.S.D.C., N.D. Okla., 731 F.Supp. 1494 (N.D. Okla. 1989), in which AMERICAN was granted judgment on GRAHAM's Title VII claim.

- *"Graham II"* is *Lillian Graham v. American Airlines, Inc., et al.*, Case No. 89-C-815-P, U.S.D.C., N.D. Okla., in which AMERICAN was granted summary judgment on the grounds of issue and claim preclusion arising from *Graham I.*

- *"Graham III"* is *Lillian Graham v. American Airlines, Inc., et al.*, Case No. CJ-91-04125, Dist. Ct., Tulsa County, State of Oklahoma, in which AMERICAN was granted summary judgment on the grounds of issue and claim preclusion arising from *Grahams I, II* and *IV*.

- In response to *Graham III*, AMERICAN filed *"Graham IV"* against both GRAHAM and her attorney, TWEEDY, on September 27, 1991,

styled *American Airlines, Inc. v. Craig Tweedy and Lillian Graham*, Case No. 91-C-762-C, U.S.D.C., N.D. Okla. On March 31, 1992, the District Court entered an injunction enjoining GRAHAM and TWEEDY from relitigating claims and issues already decided in *Grahams I* and *II*, which TWEEDY has appealed to the Tenth Circuit and is ***pending*** as Appeal No. 92-5159.

- *"Graham V"* is a Petition for Writ of Mandamus and Prohibition filed by GRAHAM and TWEEDY on January 17, 1992, in the Tenth Circuit Court of Appeals styled *Craig Tweedy and Lillian Graham v. Honorable Thomas R. Brett, United States District Judge*, Case No. 92-5011, in which Petitioners unsuccessfully sought to disqualify the District Judge to whom *Graham IV* was assigned.

- *"Graham VI"* is a *Second* Petition for Writ of Mandamus filed by GRAHAM and TWEEDY on May 28, 1992, in the Tenth Circuit again styled *Craig Tweedy and Lillian Graham v. Honorable Thomas R. Brett, United States District Judge*, Case No. 92-5107, in which Petitioners unsuccessfully sought review of the March 31, 1992 injunction entered in *Graham IV*.

- *"Graham VII"* is the instant Petition for Writ of Mandamus filed in this Court in which TWEEDY seeks review of *Graham IV* and *Graham VI*.

A chart has been provided which depicts the long history of the *"Graham Litigation."* (Respondent's App. at pp. 1-7).

On August 14, 1992, GRAHAM and AMERICAN entered into a settlement of all their litigation. All of GRAHAM's *individual* litigation, including Appeal No. 92-5159, has terminated. (Respondent's App. at p. 56).

On January 15, 1993, the three resident District Judges of the Northern District of Oklahoma entered an Order and Findings of Fact suspending TWEEDY from the practice of law before the Federal Court for three (3) years because of vexatious litigation tactics in the *Graham Litigation* and other matters. (Respondent's App. at pp. 63-71). A similar complaint for discipline was filed by the Oklahoma Bar Association and is pending before the Supreme Court of Oklahoma. A brief summary of the *Graham Litigation* will demonstrate TWEEDY's vexatious litigation tactics.

HISTORY OF THE *GRAHAM LITIGATION*

A. Chronology of *Graham I*

1. Origin of *Graham I*

On May 23, 1986, GRAHAM filed her Complaint in *Graham I* alleging two claims: (1) a claim for sex discrimination and sexual harassment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* ("Title VII"); and (2) a state tort claim for the intentional infliction of emotional distress. One of the assertions made by GRAHAM was that a work discipline she received for damaging a 4th stage turbine disk, while deblading the turbine ("the disk discipline"), was a pretext for sex discrimination. The disk and engine from which it was

removed was owned by a private travel firm called "Ports of Call." On March 18, 1987, the Court granted AMERICAN partial summary judgment on GRAHAM's state tort claim, concluding that GRAHAM's tort claim was preempted by the Railway Labor Act, 29 U.S.C. § 151 *et seq.*

2. August 11, 1989 Judgment in *Graham I* And Dismissal Of *Graham I* Appeal No. 89-5159

On August 11, 1989, the District Court entered its Findings of Fact, Conclusions of Law and Judgment. (Respondent's App. at pp. 8-30). The Honorable H. Dale Cook, District Judge, found that GRAHAM had received seventeen separate disciplines for rule violations while employed at AMERICAN. The "disk discipline" was not the first nor the last (the terminating event), but was only one of many. The decision in *Graham I* is reported at *Lillian Graham v. American Airlines, Inc.*, 731 F.Supp. 1494 (N.D. Okla. 1989). In paragraphs 30, 32 and 41 of the Findings of Fact, Judge Cook resolved the fact issues concerning the "disk discipline" adverse to GRAHAM. (Respondent's App. at pp. 16-20). On September 11, 1989, GRAHAM filed her Notice of Appeal to the Tenth Circuit from the Judgment in *Graham I*, docketed as Appeal No. 89-5159. However, on August 7, 1990, GRAHAM voluntarily filed her Application to Withdraw Appeal, and on August 10, 1990, **the Tenth Circuit dismissed her direct appeal from *Graham I*.**

3. GRAHAM's August 9, 1990 Motion For Relief from *Graham I*

On August 9, 1990, GRAHAM filed a Rule 60(b), Fed.R.Civ.P., motion for relief from the judgment in *Graham I* on the grounds of "newly discovered evidence" and "fraud" which GRAHAM argued showed that the "disk discipline" was fabricated.

4. Denial by the Court of GRAHAM's Motion for Relief

On December 13, 1990, Judge Cook entered an Order denying GRAHAM's Motion for Relief. (Respondent's App. at p. 31).

5. GRAHAM's Rule 60(b) Appeal No. 91-5060

After several motions to reconsider were denied, on April 5, 1991, GRAHAM filed an appeal from the denial of her Rule 60(b) Motion. On January 17, 1992, GRAHAM **voluntarily** filed a Motion to Dismiss Appeal No. 91-5060, and on January 21, 1992, the Tenth Circuit dismissed Appeal No. 91-5060. On April 7, 1992, the Tenth Circuit granted AMERICAN's Motion for Sanctions, and remanded the case to the District Court to determine the amount and to apportion the amount between GRAHAM and TWEEDY. (Respondent's App. at p. 46). This sanction matter is pending in *Graham I*.

B. Chronology of *Graham II*

1. Origin of *Graham II*

On September 8, 1989, GRAHAM commenced a second action in State Court, *"Graham II"*, which AMERICAN removed to the Federal Court as Case No. 89-C-815-P, U.S.D.C., N.D. Okla.

2. Claims and Issues Raised by GRAHAM in *Graham II*

GRAHAM alleged in *Graham II* that the judgment in *Graham I* was the result of engine records fraud involving the "disk discipline," perjury by AMERICAN's witnesses and a conspiracy among AMERICAN, its agents and employees, George Barton and Ken Harding, and GRAHAM's union, the Transport Workers Union, and its agent, Dennis Quish, to deprive GRAHAM, through fraud and deceit, of her employment with AMERICAN.

3. The February 2, 1992 Summary Judgment in Favor of AMERICAN in *Graham II*

On February 21, 1991, the Honorable Layn R. Phillips, District Judge, entered summary judgment in favor of AMERICAN and the other Defendants in *Graham II* on, among other grounds, the claim and issue preclusive effect of *Graham I*. (Respondent's App. at p. 35). **GRAHAM did not appeal *Graham II*.**

C. Chronology of *Graham III*

1. Origin of *Graham III*

On September 10, 1991, GRAHAM filed *Graham III* in State Court. (Petitioner's App. at p. 57-79).

2. Claims and Issues Raised by GRAHAM in *Graham III*

In *Graham III*, GRAHAM alleged once again that AMERICAN committed "fraud" against GRAHAM in *Graham I* (and apparently *Graham II*) with regard to the "disk discipline" when AMERICAN "fraudulently represented" that GRAHAM damaged the Ports of Call disk in 1985 and "fraudulently concealed" the fact that the disk had been overhauled in 1982 and not in 1985.

3. The August 31, 1992 Summary Judgment In Favor of AMERICAN in *Graham III*

On August 31, 1992, State Court Judge, the Honorable Donald Lane, granted AMERICAN summary judgment against GRAHAM in *Graham III*. (Respondent's App. at p. 58). **No appeal was filed.**

D. Chronology of *Graham IV*

1. Origin of *Graham IV*

In response to *Graham III*, on September 27, 1991, AMERICAN filed a complaint for an injunction, Case No. 91-C-762-B, *"Graham IV"*, seeking to enjoin GRAHAM and TWEEDY from further relitigating in *Graham III* the

claims and issues relating to the "disk discipline" which had been litigated in *Grahams I* and *II*. (Petitioner's App. at p. 80-116).

2. The March 31, 1992 Injunction in Graham IV Against TWEEDY and GRAHAM

On March 31, 1992, the Honorable Thomas R. Brett, District Judge, entered an injunction against GRAHAM and TWEEDY in *Graham IV* enjoining them from (i) further relitigation of the same claims and issues already litigated in *Graham I* and *Graham II*, including matters relating to the "disk discipline," and (ii) enjoining TWEEDY and GRAHAM from litigating in *Graham III*. (Petitioner's App. "A"). Judge Brett further found that the conduct of TWEEDY was vexatious and multiplicious and that sanctions should be awarded against TWEEDY. After a hearing as to the amount of sanctions before a Magistrate Judge (to which TWEEDY did not respond and at which TWEEDY did not appear), Judge Brett entered judgment against TWEEDY for $40,333.02. (Respondent's App. at pp. 49-53). TWEEDY has not paid the judgment.

3. Appeal No. 92-5159 From The March 31, 1992 Injunction in *Graham IV*

On August 13, 1992, TWEEDY filed a Notice of Appeal from (i) the March 31, 1992 Judgment, and (ii) the July 13, 1992 Judgment for Sanctions. (Respondent's App. at p. 54). On January 26, 1993, **the Tenth Circuit dismissed that part of the appeal in *Graham IV***, Case No.

92-5159, pertaining to the July 13, 1992 sanction judgment, thus affirming the sanction judgment. (Respondent's App. at p. 60). That part of the appeal still pending in *Graham IV*, No. 92-5159, pertains to the March 31, 1992 injunction. (Respondent's App. at p. 72).

E. Chronology of *Graham V*

On January 17, 1992, GRAHAM and TWEEDY filed a Petition for Writ of Mandamus and Prohibition in the Tenth Circuit styled *Craig Tweedy and Lillian Graham v. Honorable Thomas R. Brett*, Case No. 92-5011, *Graham V*, after Judge Brett denied TWEEDY's motion to disqualify him. On March 5, 1992, the Tenth Circuit denied the Petition in *Graham V*.

F. Chronology of *Graham VI*

On May 28, 1992, GRAHAM and TWEEDY filed a *Second* Petition for Writ of Mandamus in the Tenth Circuit styled *Craig Tweedy and Lillian Graham v. Honorable Thomas R. Brett*, Case No. 92-5107, *"Graham VI"*, in which GRAHAM and TWEEDY asked that the Tenth Circuit vacate the March 31, 1992 injunction entered in *Graham IV*. On June 15, 1992, the Tenth Circuit denied the Petition for Mandamus. (Petitioner's App. "B"). On September 14, 1992, the Tenth Circuit denied GRAHAM and TWEEDY's Petition for Rehearing and for Rehearing En Banc. (Petitioner's App. "C"). Also, on September 14, 1992, the Tenth Circuit granted AMERICAN's Motion for Sanctions

and ordered TWEEDY to "remit $1,500.00 to Real Party in Interest AMERICAN as a monetary penalty." (Petitioner's App. "D"). TWEEDY has not paid the judgment.

G. Chronology of *Graham VII*

On December 11, 1992, TWEEDY filed the instant Petition for Writ of Mandamus asking that this Court (i) direct the "covert circuit tyrants" (Petitioner's Brief at p. 54) of the Tenth Circuit to reconsider its order denying mandamus in *Graham VI*, and (ii) order Judge Brett to vacate the March 31, 1992 injunction entered in *Graham IV*.

SUMMARY OF THE ARGUMENT

The remedy of mandamus is a drastic and extraordinary writ reserved for genuinely extraordinary cases. Petitioner's papers simply do not show that this is such a case. The only thing extraordinary about this case is TWEEDY's vexatious and multiplicative litigation tactics. Indeed, what TWEEDY's papers do show is that he is seeking to relitigate before this Court the merits of the "disk discipline." (Petitioner's Petition at pp. 10-24). TWEEDY continues to litigate, *even after* his client, GRAHAM, has settled with AMERICAN and has terminated the litigation. In fact, TWEEDY is litigating the same issue, even now, in the pending appeal from the March 31, 1992 injunction entered in *Graham IV*, in the Tenth Circuit in Case No. 92-5129. Thus, not only does TWEEDY fail to satisfy the requirements of Rule 20, Rules

of Supreme Court, in order to justify issuance of a writ, but also he is attempting to use this Petition for Writ of Mandamus as a substitute, or more accurately, as a duplicate for his pending appeal. The Petition should be denied.

REASONS FOR DENYING THE WRIT

A. PETITIONER HAS NOT SHOWN THAT HE IS ENTITLED TO A WRIT OF MANDAMUS UNDER 28 U.S.C. § 1651(a) AND RULE 20, RULES OF SUPREME COURT.

Petitioner's papers do not show that this is a case for the issuance of a writ of mandamus pursuant to 28 U.S.C. § 1651(a). 28 U.S.C. § 1651(a) provides:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

The issuance by this Court of an extraordinary writ pursuant to 28 U.S.C. § 1651(a) "is not a matter of right, but of discretion sparingly exercised." Rule 20, Rules of Supreme Court. Much of the jurisprudence governing the issuance of a writ of mandamus has been codified in Rule 20, Rules of Supreme Court. Under the Rule, in order to justify the granting of a writ, a petitioner must show that:

- The writ will be in aid of the Court's appellate jurisdiction.

- There are present exceptional circumstances warranting exercise of the Court's discretionary powers.

- That adequate relief cannot be obtained in any other form or from any other court.

None of these elements are present here. In fact, the traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 308-10, 109 S.Ct. 1814, 1822, 104 L.Ed.2d 318 (1989), *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185 (1943). *See also Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661, 98 S.Ct. 2552, 2556, 57 L.Ed.2d 504 (1978); *Kerr v. United States District Court*, 426 U.S. 394, 402, 96 S.Ct. 2119, 2123, 48 L.Ed.2d 725 (1976); *Will v. United States*, 389 U.S. 90, 95, 88 S.Ct. 269, 273, 19 L.Ed.2d 305 (1967). Although this Court has not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of "jurisdiction," *Kerr v. United States District Court*, 426 U.S. at 402, 96 S.Ct. at 2124; *see Will v. United States*, 389 U.S. at 95, 88 S.Ct. at 273, the Court has required that a petitioner demonstrate a "clear abuse of discretion," *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383, 74 S.Ct. 145, 148, 98 L.Ed. 106 (1953), or conduct amounting to "usurpation of [the judicial] power," *De Beers Consolidated Mines, Ltd. v. United States*, 325 U.S. 212, 217, 65 S.Ct. 1130, 1133, 89 L.Ed. 1566 (1945), to be entitled to issuance of the writ. To ensure

that mandamus remains an extraordinary remedy, a petitioner must show that he lacks an adequate alternative means to obtain the relief he seeks, *see, e.g., Kerr v. United States District Court*, 426 U.S. at 403, 96 S.Ct. at 2124; *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35, 101 S.Ct. 188, 190, 66 L.Ed.2d 193 (1980) (*per curiam*), and carry "the burden of showing that [his] right to issuance of the writ is 'clear and indisputable.'" *Bankers Life & Casualty Co. v. Holland*, 346 U.S. at 384, 74 S.Ct. at 148, quoting *United States v. Duell*, 172 U.S. 576, 582, 19 S.Ct. 186, 287, 43 L.Ed. 559 (1899). When these principles are applied to this case, it is evident that TWEEDY does not even come close to meeting this demanding standard.

At the threshold, however, it is necessary to identify what actions in the Courts below TWEEDY contends justify this Court's issuance of mandamus. From a careful reading of the Petition, TWEEDY appears to be asking this Court to issue a writ of mandamus (i) directing the "covert circuit tyrants" of the Tenth Circuit to again consider his Petition for Mandamus in *Graham VI*, which sought review of the March 31, 1992 injunction entered in *Graham IV*, and (ii) ordering Judge Brett to vacate the March 31, 1992 injunction entered in *Graham IV*. In sum, TWEEDY asks this Court, by writ of mandamus, to:

> [D]irect the sound duties of the Court of Appeals and all of its judges render [sic], *en banc*, cogent findings and reasoning in compliance with the intent of the Anti-Injunction Act, dictates against fraud, Federal Rules and Due Process Clause settled by the Supreme Court.
>
> As above suggested, such direction would bring corrective attention to the record fiats and due process abuses and appearance, or probability

> of the select means and covert tyrants within such Court. Such dominoe affects [sic] would be most fair and just.

TWEEDY further asks this Court:

> In the alternative, a writ of mandamus is urged directing Thomas R. Brett, the United States District Judge below, to exercise his clear and peremptory duties to vacate the entirety of his March 31, 1992 Order and to dismiss the matter below in District Court Case No. C-762-C [sic].

(Petitioner's Brief at pp. 47-48).

Turning now to the requirements of Supreme Court Rule 20, it is clear that none of TWEEDY's wild allegations support his Petition for Writ of Mandamus.[1] First, with regard to the requirement that the Writ be "in aid of the Court's appellate jurisdiction," it is not immediately apparent that TWEEDY is even contending in his papers that Judge Brett in *Graham IV* or the "covert circuit tyrants" in the Tenth Circuit acted beyond their "jurisdiction." At most, TWEEDY contends that they were wrong in *Graham IV* and *Graham VI*. Moreover, it is evident that **both** the District Court and the Tenth Circuit had and have jurisdiction of the subject matter in *Graham IV* and *Graham VI* and of the person of the Petitioner and that it was necessary in the litigation for Judge Brett to rule on

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[1] Indeed, at no time has TWEEDY presented any proof whatsoever in support of his fanciful allegation that the Court of Appeals or any of the District Judges involved in the *Graham Litigation* have acted fraudulently or improperly. On the contrary, all of the Judges have been far more patient with TWEEDY than AMERICAN or any other private litigant in similar circumstances would have liked.

AMERICAN's complaint for an injunction in *Graham IV*. *Bankers Life & Casualty v. Holland*, 346 U.S. 379, 382, 74 S.Ct. 145, 147, 98 L.Ed. 106 (1953).

At the very most, and giving TWEEDY's paper the benefit of the doubt, TWEEDY appears to be arguing that in acting on AMERICAN's complaint and entering the March 31, 1992 injunction in *Graham IV*, Judge Brett exceeded his legal and equitable powers and this error ousted him of jurisdiction. But jurisdiction does not run the gauntlet of reversible errors. *Id.* at p. 382. The rulings on questions of fact and law presented in AMERICAN's complaint in *Graham IV* were made in the course of the exercise of the Court's jurisdiction to decide issues properly before it. The District Court's decision against Petitioner, even if erroneous, involved no abuse of judicial power and is reviewable in the appeal of *Graham IV*. Likewise, the Tenth Circuit's denial of *Graham VI*. See also *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185 (1943). The rulings in *Graham IV* and *Graham VI* do not justify mandamus. Therefore, the first element for issuance of mandamus is absent.

Second, there is no showing whatsoever of any exceptional circumstances warranting exercise of this Court's discretionary powers. Both the District Court and the Tenth Circuit have on numerous occasions carefully considered the facts and issues presented by the *Graham Litigation* in *Grahams I, II* and *IV* as well as in the two mandamus proceedings in the Tenth Circuit. *U.S. v. Griesa*, 481 F.2d 275, n. 2 at p. 278 (2nd Cir. 1973) (supervisory mandamus is particularly ill suited as a method of policing a District Court's decisions that turn on issues of fact). The Court's discretion to deny writs is often

reflected in statements that the writ should issue only if petitioner meets the burden of showing that the right to issuance of the writ is "clear and indisputable." *Bankers Life & Casualty Co. v. Holland*, 346 U.S. at 383, 74 S.Ct. at 148. AMERICAN submits that, rather than showing any usurpation of power justifying the granting of the writ, both the District Courts and Court of Appeals, have been *right* and *correct* in their rulings in the *Graham Litigation*. Petitioner does not show a "clear and indisputable right" to the writ. Petitioner has utterly failed to present exceptional circumstances.

Finally, adequate relief for TWEEDY in *Graham IV* is obtainable under ordinary remedies of appeal. Petitioner has, in fact, appealed the March 31, 1992 injunction entered in *Graham IV* to the Tenth Circuit in Case No. 92-5159. Thus, Petitioner is availing himself of appellate review.[2] It should be pointed out that GRAHAM has settled her claim against AMERICAN and has terminated her litigation against AMERICAN. Since it was GRAHAM's claim that was the underlying basis of *Graham III* and TWEEDY was only acting as her counsel, it would seem that TWEEDY's objection to the March 31, 1992 injunction is moot. As to GRAHAM, the *Graham Litigation* is over. The only matters remaining are the sanction matters against TWEEDY. Whatever is left is

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[2] It is fundamental that extraordinary writs cannot be used as substitutes for appeal. *Ex Parte Fahey*, 332 U.S. 258, 259-260, 67 S.Ct. 1558-1559, 91 L.Ed. 2041 (1947) (extraordinary writs should be resorted to only where appeal is a clearly inadequate remedy). "Extraordinary writs . . . may not be used to thwart the congressional policy against piecemeal appeals." *Parr v. U.S.*, 351 U.S. 513, 76 S.Ct. 912, 100 L.Ed.2d 1377 (1956).

reviewable in *Graham IV* currently on appeal to the Tenth Circuit. Because adequate relief is available to Petitioner in his Appeal from *Graham IV*, No. 92-5159, the Petition for Writ of Mandamus should be denied.

In short, none of the elements required by Rule 20, Rules of Supreme Court, are present here and the Writ should be denied.

B. THE PETITION FOR MANDAMUS IS AN IMPROPER ATTEMPT BY TWEEDY TO OBTAIN AN EXTRAORDINARY WRIT AS A SUBSTITUTE FOR APPEAL AND RELITIGATE ISSUES ALREADY DECIDED IN *GRAHAM I, GRAHAM II* AND *GRAHAM IV.*

As shown by the Statement of the Case, an inordinate amount of litigation has followed Judge Cook's original judgment in *Graham I.* AMERICAN wants to make one thing absolutely clear. TWEEDY has never presented any proof whatsoever that the judgments against GRAHAM were based on fraud, or that the factual findings in *Grahams I* and *IV* that GRAHAM damaged the disk were the result of fraud. The fact that GRAHAM damaged the disk has been preclusively decided.

Furthermore, TWEEDY never completed on behalf of GRAHAM any appeal of the judgments below. TWEEDY either failed to appeal the adverse judgments (as in *Grahams II* and *III*) or dismissed the appeal in midstream (as in *original Graham I* and the Rule 60(b) denial in *Graham I*). *Only now,* at the very stroke of midnight, is

TWEEDY apparently pursuing an appeal in *Graham IV*. Clearly, review of this matter by way of mandamus at this late date is inappropriate.

As noted by Judge Brett in *Graham IV* in considering to impose sanctions against TWEEDY pursuant to 28 U.S.C. § 1927:

> The Court views the pending state court proceeding as essentially vexatious and baseless, the issues therein having been resolved against Graham in Graham I and Graham II. Part of the Court's view is shaped by the fact the [sic] Graham, while strongly protesting alleged wrongs committed against her at the hands of American and others, has never completed an appeal of the adverse decision in either Graham I and Graham II to the Tenth Circuit Court of Appeals.
>
> * * *
>
> It occurs to the Court that a party litigant who alleges such deliberate maligning and intrigue being practiced upon her would surely sound out her grievances in a higher court, having achieved no satisfactory results at the District level. Further, it is obvious that Graham is not intimidated by the prospect of more litigation, which sometimes chills a litigant's appeal decision.

(Petitioner's App. "A" at p. 21).

It is obvious that TWEEDY is simply trying to relitigate the disk discipline issue already decided against GRAHAM and TWEEDY in *Grahams I, II* and *IV*. TWEEDY has argued throughout, as justification for his

continuing to litigate the "disk discipline," that he "discovered" in November, 1990, after the judgment in *Graham I*, that the disk was "repaired" in 1982 and *not* 1985.[3] Therefore, TWEEDY argues, GRAHAM could not have damaged the disk in 1985 and AMERICAN's assertion at the trial of *Graham I* that she did was false. TWEEDY argues that the "fact" of the "1982 repair – no 1985 repair" was not litigated or decided in *Grahams I, II* or *IV* and it was error for the District Court in *Graham IV* in the March 31, 1992 Order to enjoin TWEEDY and GRAHAM from further relitigating the issue in *Graham III* pursuant to the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283. TWEEDY does concede that "the fact issues and claims [which] were decided against her by the District Court" in *Graham I* "including a finding of her 1985 work damage to turbine disc [sic] S/N 9B6198 (Appendix A at 3-4), [is] one damage element to her State Court fraud claim." (Petitioner's Brief at p. 12).

AMERICAN submits that TWEEDY continues to miscomprehend the scope of claim and issue preclusion. As stated by Judge Phillips in *Graham II* (Respondent's App. at p. 35), granting AMERICAN summary judgment, and quoting from *Ten Mile Industrial Park v. Western Plains Service Corp.*, 810 F.2d 1518, 1523 (10th Cir. 1987):

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[3] The truth is, the engine was "repaired" both in *1982* and in *1985*. The 1982 repair was the result of AMERICAN selling a Boeing 707 aircraft to Ports of Call. The engine in which the disk was installed was overhauled as part of the sale. The 1985 engine repair was the result of Ports of Call sending the engine back to AMERICAN after a report of engine "vibration" during operation. In the process of the 1985 repair, GRAHAM damaged the disk.

> Under the doctrine of res judicata (claim preclusion) 'a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.' *Id.* at 1522 (quoting *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 n. 5 (1979)). The doctrine 'bars relitigation of issues that were or *could have been raised* in the first action.' *Id.* at 1522-23 (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1180)) (emphasis added).
>
> * * *
>
> Under the doctrine of collateral estoppel (issue preclusion), 'once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.' *Ten Mile Industrial Park*, 810 F.2d at 1523 (quoting *Allen*, 449 U.S. at 94).

Just as Judge Phillips held in *Graham II* and Judge Brett held in *Graham IV*, relitigation of the "disk discipline" is barred by both claim and issue preclusion. Clearly, Judge Cook in *Graham I* specifically found that GRAHAM damaged the disk in 1985 and again in *Graham IV*, Judge Brett found that GRAHAM damaged the disk in 1985. (Respondent's App. at pp. 16-17 and Petitioner's App. "A" at pp. A-12-13). That fact has been decided not once, but twice. Further, TWEEDY's Rule 60(b) Motion to Vacate the *Graham I* judgment on the ground of "newly discovered evidence" and "fraud," *i.e.* that the 1985 disk damage did not occur, was rejected by Judge Cook in the December 13, 1990 Order entered in *Graham I* denying the Rule 60(b) motion to vacate. (Respondent's App. at p. 31).

In the March 31, 1992 injunction entered in *Graham IV*, Judge Brett found:

> In this matter, the Court concludes the gravamen of Graham's pending state court proceeding is that the repair of, and therefore the damage to, the 4th stage turbine disk of the Ports of Call engine occurred in 1982 and could not have occurred in 1985 as found by Judge Cook in Graham I. This Court concludes from the evidentiary hearing and the present pleadings and also the pleadings of Graham I (including the record), Graham II and Graham III, that this is the precise issue around which the various allegations of fraud, perjury and record forging are layered. The Court further concludes that Graham's claims and issues in Graham III are barred by the doctrine of *res judicata* and collateral estoppel from Graham I and II.

(Petitioner's App. "A" at pp. 19-20). Based on this finding, the Court entered an injunction enjoining GRAHAM and TWEEDY from further litigating in *Graham III* and from further instigating against AMERICAN any further proceeding, in either state or federal court or any court or administrative tribunal, on these same claims and/or issues.

The March 31, 1992 injunction barring further relitigation of the issue was appropriate under the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147, 108 S.Ct. 1684, 1689, 100 L.Ed.2d 127 (1988). TWEEDY has no basis to complain that his former client, GRAHAM, did not have her day in Court on the issue.

Even the courts below have grown tired of TWEEDY's vexatiousness. For example, the Tenth Circuit, in its April 7, 1992 Order remanding Appeal No. 92-5060 (pertaining to the Rule 60(b) in *Graham I* appeal which TWEEDY dismissed), stated in pertinent part:

> The record in this case is replete with multiple and vexatious filings by plaintiff, including a previous appeal to this Court filed and voluntarily dismissed by plaintiff. We have reviewed the record, but plaintiff's litigation before the district court consisted of filings so numerous and multiplicative that we will not attempt to recap the proceedings. Pursuant to statutory authority, as well as the Court's inherent power to deter frivolous and abusive litigation, we have determined that sanctions are appropriate in this case.

(Respondent's App. at p. 46) (footnote omitted).

AMERICAN submits that TWEEDY's Petition for Writ of Mandamus is simply another attempt to relitigate vexatiously the issues already litigated in *Grahams I, II* and *IV*. The Petition should be denied.

CONCLUSION

The Petition for Writ of Mandamus should be denied. TWEEDY has not made the showing required by Rule 20, Rules of the Supreme Court, to justify the issuance of a writ of mandamus to either the Tenth Circuit or the District Court. Further, the Writ should be denied because the subject matter described in TWEEDY's Petition is the subject of the pending appeal from *Graham IV* in the

Tenth Circuit, Case No. 92-5159. Mandamus should not be a substitute for appeal.

Respectfully submitted,

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February 22, 1993

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1986						
• 5/23/86	Complaint Filed *(by Graham)*					
1987						
• 3/18/87	Judgment entered for A.A. on 2nd cause of action *(by Court)*					
• 12/28/87	Entry of Appearance on behalf of Graham *(by Tweedy)*					
1988						
• 4/25/88	Motion to Reconsider 3/18/87 Judgment on 2nd cause of action *(by Tweedy)*					
• 5/5/88	Order Denying Motion to Reconsider *(by Court)*					
• 5/11/88	Commencement of Non-Jury Trial					
• 5/24/88	Suspension of Non-Jury Trial *(by Court)*					

	GRAHAM I	GRAHAM II	GRAHAM III	GRAHAM IV	GRAHAM V	GRAHAM VI
1989						
• 3/13/89	Cont'd Non-Jury Trial					
• 8/11/89	Findings of Fact/ Conclusions of Law filed *(by Court)*					
• 9/8/89		Petition filed (by Tweedy)				
• 9/11/89	Notice of Appeal to the Tenth Circuit *(by Tweedy)*					
• 10/2/89		Notice of Removal to federal court *(by A.A.)*				
1990						
• 6/13/90		Amended Complaint filed *(by Tweedy)*				
• 7/6/90		Motion for Summary Judgment filed *(by A.A.)*				
• 8/9/90	Rule 60(b) Motion filed *(by Tweedy)*					
• 8/10/90	Tenth Circuit Appeal Dismissed *(by Tweedy)*					
• 9/20/90		A.A. Motion for Summary Judgment granted *(by Court)*				
• 11/21/90	Application for Leave to File Supp. Brief with Newly Discovered Evidence					

	GRAHAM I	GRAHAM II	GRAHAM III	GRAHAM IV	GRAHAM V	GRAHAM VI
• 12/13/90	Rule 60(b) Motion Denied *(by Court)*					
• 12/24/90	Motion for Reconsideration filed *(by Tweedy)*					
1991						
• 1/15/91	Motion for Reconsideration denied *(by Court)*					
• 2/11/91	Motion for Clarification of 12/13/90 Order filed *(by Tweedy)*					
• 2/21/91		Final Judgment in favor of A.A. *(by Court)*				
• 2/27/91	Order denying Motion for Clarification *(by Court)*					
• 3/11/91	Motion for Reconsideration filed *(by Tweedy)*					
• 3/18/91	Motion for Reconsideration denied *(by Court)*					
• 4/5/91	Notice of Appeal of 2/27 & 3/18 Orders filed *(by Tweedy)*					

	GRAHAM I	GRAHAM II	GRAHAM III	GRAHAM IV	GRAHAM V	GRAHAM VI
• 9/10/91			Petition filed *(by Tweedy)*			
• 9/27/91				Complaint filed against Graham & Tweedy *(by A.A.)*		
• 12/5/91			Order Staying all proceedings pending decision in Graham IV *(by Judge Lane)*			
1992						
• 1/17/92					Petition for Writ of Mandamus and Prohibition filed *(by Tweedy)*	
• 2/7/92	*Tenth Circuit* Motion for Sanctions for filing a frivolous appeal *(by A.A.)*					
• 3/3/92					Petition for Writ of Mandamus and Prohibition Denied *(by Court)*	
• 3/31/92				Order Granting Injunction and award of sanctions against Tweedy *(by Court)*		
• 4/7/92	Order granting Motion for Sanctions *(by Tenth Circuit)*					

	GRAHAM I	GRAHAM II	GRAHAM III	GRAHAM IV	GRAHAM V	GRAHAM VI
• 4/10/92				Motion for Reconsideration (by Tweedy)		
• 4/20/92	Petition for Rehearing of 4/7/92 Order *(by Tweedy)*					
• 4/24/92	Order Denying Petition for Rehearing *(by Tenth Circuit)*					
• 5/20/92				Order Denying Motion for Reconsideration		
• 5/21/92				Magistrate Judge's Report and Recommendation		
• 5/27/92				Second Motion For Reconsideration (by Tweedy)		
• 5/28/92						Petition for Writ of Mandamus and Prohibition *(by Tweedy)*
• 6/15/92						Petition for Writ of Mandamus and Prohibition Denied *(by Court)*
• 6/15/92				Motion for Citation of Contempt for Failure to Obey Injunction		
• 6/15/92						Motion for Sanctions against Graham & Tweedy *(by A.A.)*

	GRAHAM I	GRAHAM II	GRAHAM III	GRAHAM IV	GRAHAM V	GRAHAM VI
• 6/26/92						Order directing Tweedy to respond to A.A.'s Motion for Sanctions *(by Court)*
• 6/30/92						Petition for Rehearing & Suggestion For *En Banc* Consideration *(by Tweedy)*
• 7/13/92				Order Denying Second Motion for Reconsideration; Motion for Stay; and Affirmed Magistrate's Recommendation		
• 7/13/92				Judgment re Sanctions		
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• 8/14/92				Stipulation for Dismissal of Appeal No. 92-5159 as to Graham Only		
• 9/3/92			Order Granting Summary Judgment to American			

	GRAHAM I	GRAHAM II	GRAHAM III	GRAHAM IV	GRAHAM V	GRAHAM VI
• 9/13/92					Denial By Tenth Circuit of Plaintiff's Petition on Rehearing and Suggestion for *En Banc* Consideration	
• 9/15/92				Order Denying Tweedy Rule 59(e) Fed.R.Civ.P., Motion for Relief from July 13, 1992 Judgment		
1993						
• 1/29/93				Order By Tenth Circuit in Appeal No. 92-5159 Dismissing Part of Tweedy's Appeal		

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LILLIAN A. GRAHAM, Plaintiff, vs. AMERICAN AIRLINES, INC., a Delaware corporation, Defendant.	)	No. 86-C-516-C

FINDINGS OF FACT and CONCLUSIONS OF LAW

The above-styled action for discrimination on account of sex predicated on 42 U.S.C. §2000(e) *et seq.*, Title VII of the Civil Rights Act of 1964 came on for nonjury trial. Evidence was presented on May 9 to May 13, 1988, May 16 to May 20, 1988, May 23 to May 24, 1988, March 13 to March 16, 1989, and March 20 to March 22, 1989. Closing argument was held on March 23, 1989. After considering the pleadings, the testimony and exhibits admitted at trial, all of the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following Findings of Fact and Conclusions of Law in accordance with Rule 52, F.R.Cv.P.

FINDING OF FACT

A. Jurisdiction and Venue

1. The alleged acts of employment discrimination upon which plaintiff predicates her action occurred during the years 1984 and 1985.

2. The plaintiff, Lillian Graham (Graham), has filed the following charges of discrimination.

a. March 5, 1985 charge of discrimination filed with Equal Employment Opportunity Commission (EEOC).

b. June 26, 1985 charge of discrimination filed with Oklahoma Human Rights Commission (OHRC).

c. August 22, 1985 charge of discrimination filed with the OHRC.

d. October 1, 1985 charge of discrimination filed with the EEOC.

A notice of right to sue was issued on February 24, 1986. On May 23, 1986, Graham filed her Complaint within ninety (90) days of the notice.

3. The defendant, American Airlines, Inc. (American), is an employer engaged in an industry that affects commerce and employs more than fifteen (15) employees for each working day in each of the twenty (20) or more calendar weeks in the calendar years involved herein. Thus, American was an employer within the meaning of Title VII during the calendar years involved herein.

4. The alleged unlawful employment practices which are the subject of this action were committed in Tulsa, Oklahoma, within the Northern District of Oklahoma.

B. Liability of Defendant American

5. Graham is an adult female and resident of Tulsa, Oklahoma.

6. On July 1, 1968, Graham was employed by American. Graham's employment was subject to the terms of employment appearing on the employment application she signed when she became employed by American. Graham was discharged from American on October 31, 1985 for the stated reasons of insubordination, loafing on the job and failure to cooperate with other employees in violation of Company Rules 7, 12 and 15 and her overall employment record consisting of the following disciplinary actions:

July 17, 1984	C-314	Three-Day Suspension and Warning
June 24, 1985	C-314	Five-Day Suspension and Warning
July 2, 1985	C-314	Warning
Sept 27, 1985	C-314	Eight-Day Suspension and Final Warning

During her employment, Graham was affected by several layoffs due to a reduction in force; therefore Graham was employed by American for a total period of approximately ten (10) years.

7. At all times pertinent to her Title VII claim, Graham was an airplane mechanic at American assigned to the Tulsa maintenance and engineering facility and was a member of the collective bargaining unit represented by the Transport Workers Union of America, AFL-CIO (TWU). Graham's employment with American was governed by the Collective Bargaining Agreement.

8. Under the labor agreement, American recognized the TWU as the sole and exclusive collective bargaining

representative of the employees covered thereby, with respect to wages, hours of employment and other conditions of employment as provided by the Railway Labor Act, 45 U.S.C. §151 *et seq.* Under the labor agreement, American retained the right to the extent not limited or modified by the terms and conditions of the agreement to hire, promote, assign to shifts, maintain discipline and discharge for justifiable cause. American and the TWU further agreed that the agreement contained the whole agreement of the parties as to all existing matters that may be subject to the Collective Bargaining Agreement for the duration of the labor agreement.

9. The arbitrators who heard Graham's grievances are members of the American Association of Arbitrators and were chosen by mutual agreement between American and the TWU.

10. Graham was hired on July 1, 1968 as a junior mechanic in the components/avionics maintenance department. On July 1, 1969, Graham was promoted to a mechanic after passing the qualifying test for electrical instrument overhaul. On August 28, 1970, Graham was laid off due to a reduction in force at American. On September 10, 1970, Graham failed the qualifying test for a gyro instrument overhaul.

11. On September 10, 1973, Graham was recalled from layoff and assigned to the components/avionics maintenance department. On November 11, 1974, Graham was again laid off due to a reduction in force.

12. On February 3, 1977, Graham was recalled from layoff and assigned to the aircraft maintenance department.

13. On July 27, 1977, Graham received a C-314 disciplinary warning for being in the smoking area for an excessive time period in violation of Rule 15 of American's Rules and Regulations preventing loafing on the job. A C-314 Form is used to notify employees regarding disciplinary action up to and including discharge. Graham filed a grievance objecting to the warning. A neutral arbitrator upheld American's disciplinary warning contained in the C-314.

14. On October 18, 1977, Graham received a C-314 disciplinary warning for violating Rule 3, remain in work area. This grievance was denied at the first and second steps. Graham did not pursue the disciplinary warning to arbitration.

15. On June 7, 1978, Graham received a C-314 and a three-day disciplinary suspension without pay for violating Rule 3, remain in work area, and Rule 15, restriction of output. This discipline was upheld in arbitration by the neutral arbitrator.

16. On March 3, 1979, Graham was reassigned within aircraft maintenance from the 707 aircraft to the 747 aircraft. On March 2, 1979, Graham was reassigned from the 747 aircraft to the 707 aircraft.

17. On September 14, 1979, Graham received a C-314 form for violating Rule 3, out of work area, and Rule 15, restriction of output, resulting in Graham's discharge from American. On October 8, 1979, at the request of the TWU, management converted Graham's discharge to a disciplinary suspension and she was reinstated without pay pursuant to an greed [sic] rehabilitation plan.

18. On October 12, 1979, Graham filed an EEOC charge of discrimination based on sex alleging that her discharge was based on sexual harassment. After an on-site investigation of Graham's charge by the EEOC, the EEOC on July 10, 1980 issued a written determination in favor of American.

19. On May 8, 1980, Graham received a C-314 disciplinary warning for violating Rule 22 for receiving a garnishment. The garnishment was later discharged by the court. On July 23, 1980, Graham began a leave of absence for sick leave.

20. On September 2, 1980, Graham returned from sick leave and was assigned to the 747/DC-10 line in aircraft maintenance.

21. On August 28, 1981, Graham was laid off due to a reduction in force. On January 25, 1982, Graham was recalled from layoff and assigned to the 727 line in aircraft maintenance. On September 1, 1982, Graham was reassigned within aircraft maintenance from the 727 to the 747/DC-10 line.

22. On April 26, 1983, Graham received a C-314 and ten-day disciplinary suspension for unsatisfactory job performance due to Graham's failure to connect a pressure line on the aircraft's emergency evacuation equipment which was discovered by the FAA during a surprise inspection at the Los Angeles International Airport. This discipline was upheld in arbitration. Two male mechanics also received C-314's and ten-day and twelve-day disciplinary suspensions, respectively, for the same unsatisfactory job performance. The male supervisor involved received a ten-day suspension.

23. On July 11, 1983, Graham was reassigned (labor loaned) from aircraft maintenance to the JT-3 check and repair shop in power plant maintenance. On October 10, 1983, Graham was reassigned from power plant maintenance back to aircraft maintenance.

24. On March 1, 1984, Graham was reassigned within aircraft maintenance from the 727 line to the 747/DC-10 line at her request.

25. On July 17, 1984, Graham was issued a C-314 and three-day disciplinary suspension for her failure to tighten a "B" nut on an aircraft. Such discipline for a leak found at a leak check was unprecedented at American. Graham filed a grievance protesting this disciplinary action in accordance with labor agreement. The arbitration board upheld American's disciplinary action.

26. On August 2, 1984, Graham was reassigned from the aircraft maintenance department to another department at the American engineering and maintenance base and was permanently restricted from working in the aircraft maintenance department. Graham filed a grievance protesting this permanent restriction on August 3, 1984 which grievance stated in pertinent part:

> On August 2, 1984, I received an AA Form No. 541-3 reassigning me from aircraft maintenance shop 2254-2 to the blade and vane shop, 259-9. I also received a letter from acting aircraft maintenance director, C.L. Harliss, permanently restricting me from working in the aircraft maintenance department.
>
> This is a violation of the TWU-AA Agreement. The company has treated me unjustly, they have harassed, threatened and discriminated against

> me because I am a woman. Therefore, I grieve to be assigned back to the aircraft maintenance, shop 2254-2 immediately. I am qualified to perform this work. Also, I grieve the above mentioned letter be rescinded and removed from all records.
>
> (Defendant's Exhibit 54).

On March 28, 1985, the System Board of Adjustment made the following arbitration award:

> The claim by the union and Ms. Lillian Graham, that she had been subjected to unequal treatment for reason of her sex, in violation of the Agreement's Article 28, is denied.
>
> The claim by the Union and Ms. Lillian Graham that the permanent restriction of her working as an Airline Mechanic in the Aircraft Maintenance Department violated the Agreement, is sustained. The restriction shall be rescinded and job vacancies in the Aircraft Maintenance Department shall be available to her as provided by the Agreement.
>
> (Defendant's Exhibit 58).

27. Field trip hours were to be equalized among the employees under the collective bargaining agreement because field trips were attractive by virtue of the travel and overtime. On December 17, 1984, Graham submitted her AOI requesting her assignment to a scheduled field trip to Wichita, Kansas, and was present when Crew Chief Nevins told Supervisor Barton that if Graham went on the field trip, Barton could get another crew chief to go. On the same day, Supervisor Barton filed his AOI denying Graham's field trip permission because her medical file showed that she was restricted to safety wiring

work because of elbow problems. Graham informed Supervisor Barton that her elbow was no longer a problem. In response and on December 18, 1985, Supervisor Barton conducted a F-29 disciplinary meeting because Graham did certain work on a pump as recommended by another mechanic and suggested a possible suspension. Graham offered to withdraw her field trip request if he would not suspend her. On the same day, December 18, 1984, Graham filed her AIO [sic] withdrawing her request for the field trip and no suspension was imposed.

28. On August 13, 1984, Graham was reassigned within power plant maintenance from the blade and vane shop to the JT-3 check and repair shop. On March 5, 1985, Graham filed an EEOC charge of discrimination based on sex and based on her permanent restriction from working in aircraft maintenance.

29. The Supervisor's Record of Discussion and Action to Graham indicates George Barton counseled Graham about her job performance on several occasions. On May 6, 1985, George Barton gave Graham an overall performance rating which was below average.

30. On June 7, 1985, Graham worked on a fourth stage turbine disk. She reported a dent to her supervisor. On June 24, 1985, plaintiff received a five day suspension without pay. Graham's grievance was denied on September 30, 1985. (Defendant's Exhibit 70). During trial, plaintiff attempted at length to demonstrate (1) the disk on which she was working belonged to American, and was distinct from a disk belonging to Ports of Call, and (2) she did not damage the disk. The Court has concluded that the disk involved was the Ports of Call disk, and that

plaintiff damaged it. Under questions from the Court, plaintiff's memory was unclear as to precisely what happened. (*See* Transcript, Vol.V, pp.486-492). Plaintiff's daughter, Sandra Whiteis, testified at trial that her mother telephoned one day from work, admitting that plaintiff had damaged a turbine disk. Viewing also the testimony of various other eyewitnesses, the Court has concluded that the preponderance of the evidence lies in defendant's favor on this issue.

31. Graham took a one week vacation the next day, June 8, 1985. She travelled to American's headquarters in Dallas, Texas. She sought to report sexual abuse to Vice President Masiello. He told plaintiff to provide the names of offenders and witnesses to her supervisors. On plaintiff's first day back, June 17, 1985, supervisor Barton yelled at her for reporting to Dallas and ordered her to sort out nuts and bolts.

32. Certain records pertinent to the disk discipline were missing. The Court finds that the factual determination can still be made and that American's explanation for the missing records (they were used in arbitration proceedings and apparently misplaced) is plausible. A "scrap tag" produced at trial shows the Ports of Call disk to have been scrapped as useless on May 13, 1985. Viewing the totality of evidence, the Court finds the most plausible conclusion to be that a "5" (representing the fifth month) was written, when a "6" was intended, and that the disk was scrapped on June 13, 1985.

33. On June 24, 1985, Graham received a C-314 and five-day disciplinary suspension for unsatisfactory job performance which was upheld in arbitration. On June

26, 1985, Graham filed an EEOC charge of discrimination based on sex and based on the alleged sexual harassment by her co-workers. When Graham complained in June, 1985, of sexual harassment, American conducted an investigation of her complaints by interviewing those persons who she had named as persons harassing her. While American concluded that no sexual harassment had occurred, American did find that Graham and two male mechanics, Alan Powers and Darrell Martin, had engaged in conduct which violated Rule 31, horseplay, for which Graham, Powers and Martin each received a disciplinary C-314 warning. The C-314 Graham received for violating Rule 31, horseplay, was upheld in arbitration.

34. Graham received her Airframe and Power Plant (A&P) License on July 16, 1985.

35. On August 22, 1985, Graham filed an EEOC charge of discrimination based on sex and based on her five-day disciplinary suspension for unsatisfactory job performance imposed by the June 24, 1985 C-314.

36. On September 26, 1985, Graham did not take her break with the men at 0800 hours but worked for a while and then went to the ladies' rest room and took a 10-15 minute break. While there, Graham read a jewelry brochure with order forms left in the restroom by another employee.

37. On September 27, 1985, Graham received a C-314 and eight-day disciplinary suspension for violating Rule 3, remaining in work area, and Rule 15, restriction of output, which suspension was upheld in arbitration. The infraction citation of September 27, 1985, was based, in part, on information supplied by a female office worker

sent to the women's restroom by Ken Harding of Labor Relations to spy on Graham. On October 1, 1985, Graham filed an EEOC charge of discrimination based on sex and based on the eight-day suspension and alleged bypass for overtime work.

38. On October 31, 1985, Graham was discharged from American pursuant to Form C-314 for violation of Rule 7, 12 and 15 and because of her overall employment record consisting of the following disciplinary actions:

July 17, 1984	C-314	Three-Day Suspension and Warning
June 24, 1985	C-314	Five-Day Suspension and Warning
July 2, 1985	C-314	Warning
Sept 27, 1985	C-314	Eight-Day Suspension and Final Warning

This discharge was upheld in arbitration.

39. The plaintiff has complained that she was assigned undesirable tasks while employed in the JT-3 department such as sorting nuts and bolts, painting equipment, washing airplane engines and filling out paperwork or not rotated on her job assignments because of her sex or in retaliation for her filing EEOC charges. The Court finds that the plaintiff has failed to establish that she was assigned these jobs or not rotated because of her sex or in retaliation for her filing EEOC charges of sex discrimination.

40. The plaintiff also complained that other mechanics took breaks and committed acts of unsatisfactory job performance and were not disciplined. The plaintiff failed to establish that she was treated any differently than any other mechanic.

41. The plaintiff has also complained that she was denied paperwork in violation of FAA regulations or denied documentation which would prove she did not damage a turbine disc because of her sex or in retaliation for her filing EEOC charges. The Court finds that the plaintiff has failed to establish that she was denied paperwork in violation of FAA regulations or denied documentation which would prove she did not damage a turbine disc.

42. The plaintiff complains that she was required to take a qualifying test in order to bid on certain jobs. The defendant, American, established that the requirement that plaintiff take a qualifying test was made only after the company began to hold grave doubts that the plaintiff could perform certain jobs. Further, the defendant had the contractual right to require that the plaintiff take a qualifying test. The Court further finds that plaintiff refused to take a qualifying test. The Court finds that the requirement that plaintiff take a qualifying test in order to bid on certain jobs was not made because of plaintiff's sex, or in retaliation against plaintiff for filing EEOC charges or to harass plaintiff because of her sex.

43. The plaintiff complains that she was the victim of sexual harassment by two mechanics and her crew chief. The Court finds that in June, 1985, after plaintiff had made several allegations of harassment against two

male mechanics, Darrell Martin and Alan Powers, the defendant conducted a thorough investigation of plaintiff's charges. The defendant interviewed each person named by the plaintiff as a person who had either harassed plaintiff or, according to plaintiff, had observed any incident of harassment. While the defendant concluded that no sexual harassment of plaintiff had occurred, American did find that Graham and the two male mechanics, Alan Powers and Darrell Martin, had engaged in conduct which violated Rule 31, horseplay, for which Graham, Powers and Martin each received a disciplinary C-314 warning. Plaintiff's testimony in this regard was not incredible in many respects, but fails to meet the necessary burden of proof standing alone.

44. Most witnesses testified that Graham was an average mechanic. The Court finds from the evidence presented that the plaintiff has established that she was qualified for and able to do the job for which she was discharged.

45. From the admitted facts and evidence admitted at trial, the Court finds that Graham received numerous C-314 disciplinary forms for violations of American's rules and regulations including incidents of unsatisfactory job performance. The supervisor notes also establish that Graham's supervisors counseled Graham on several occasions for poor job performance. The Court finds that Graham was a disciplinary problem. Graham frequently refused to remain in her work area. With only one exception, all the arbitration awards all held that defendant's disciplinary actions of plaintiff were fair, proper and not based on unequal treatment.

46. Graham claimed that American engaged in a pattern of disparate treatment, retaliation and harassment against her because of her gender. The Court fails to discern such a pattern.

47. The Court further finds that male mechanics received similar disciplinary actions for similar violations of American's rules and regulations. The Court finds that no employee with as many C-314's as Graham was allowed to remain employed at American.

48. The Court finds that Graham was not subject to unwelcome sexual harassment. There was conflicting testimony regarding plaintiff's wearing of "suggestive" T-shirts, and engaging in "shop talk" (i.e., using profanity). The Court finds that plaintiff failed to sustain her burden of proof on the issue.

49. The court further finds that as noted before when Graham made her allegations of sexual harassment, her claims were immediately and thoroughly investigated and appropriate action was taken. Graham identified three male mechanics who she alleged sexually harassed her. American concluded after a thorough investigation that while no sexual harassment had occurred, there were instances of horseplay in which Graham herself had engaged. The defendant therefore issued horseplay warnings to Graham and two of the three mechanics. Graham also complained that a newspaper article written about her had been altered by some male mechanics. The written additions ridiculed Graham for poor job performance. The alterations contained no sexual innuendos or vulgarities. When Graham brought the newspaper article to

the attention of defendant, the defendant again thoroughly investigated the matter. Supervisor Barton issued a written warning to the three mechanics thought to be involved stating that any such further conduct could result in further discipline up to and including discharge. Additionally, when Graham complained that an inspector had used vulgar language toward her, the inspector's supervisor issued a written warning to the inspector not to speak to Graham in that manner. The Court further finds that Graham was not prevented from bidding back into aircraft overhaul. To the contrary, Graham could have bid back into aircraft overhaul if she would have passed a qualifying test. American's administration manuals allow management to require a mechanic to take a qualifying test if management doubts a mechanic's skill level to perform a job. The Court notes that the arbitrator who lifted Graham's permanent restriction from aircraft overhaul did not place her back into aircraft overhaul but simply stated that American should allow Graham to bid into aircraft overhaul if she wanted the "risk of failing once again and incurring harsher discipline". (March 28, 1985 arbitration decision by Milt Rubin). The Court finds that American was not restricting Graham from bidding back into aircraft overhaul but rather was simply exercising management prerogative to require Graham to take a qualifying test.

50. The Court further finds that Graham was not passed over for overtime as a result of retaliation. The Court finds that in order to be eligible for an overtime job, a mechanic must have previous experience with that job. The Court finds that Graham had no experience in performing the tasks required for overtime.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

A. Jurisdiction

1. All filing requirements of Title VII of the Civil Rights Act of 1964 as amended in 1972 (Title VII) which are a prerequisite to the jurisdiction of this Court have been satisfied by the plaintiff herein. Title 42 U.S.C. § 2000(e)-5(e)(f)(1).

2. The defendant therein is an employee subject to the provisions of Title VII. 42 U.S.C. § 2000(e)(b), (h).

3. Venue properly lies in this Court. 42 U.S.C. § 2000(e)-5(e)(f)(3).

B. Weight to be Given to the Arbitration Decisions

As noted, with one exception the penalties imposed on plaintiff were upheld in arbitration. It is established that "a court must not give a prior arbitration preclusive effect in a Title VII suit." *Cooper v. Asplundh Tree Expert Co.*, 836 F.2d 1544, 1553 (10th Cir. 1988). However, defendant asks the Court to give great weight to the arbitration decision, based upon factors enunciated in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). The court finds this precedent largely inapplicable because in the present record there is only one instance of plaintiff specifically raising a charge of sexual discrimination, as distinct from basic unfairness. A court can accord an arbitral determination great weight when the determination gives full

consideration to an employee's Title VII rights. *Alexander,* 415 U.S. at 60 n.21. Here, there has been an insufficient showing that such full consideration was given. Congress has entrusted the ultimate resolution of discriminatory employment claims to the judiciary. *Darden v. Illinois Bell Tele. Co.,* 797 F.2d 497, 504 (7th Cir. 1986). The Court has determined to give little weight to the arbitration decisions.

C. Plaintiff's Sexual Harassment Claim

In *Meritor Sav. Bank v. Vinson,* 477 U.S. 57 (1986), the United States Supreme Court affirmed the development of a cause of action for "sexual harassment" under Title VII.

Prima Facie Case

In a claim of hostile work environment because of sexual harassment, the employee must prove the following for a prima facie case: (1) that the employee belongs to a protected group; (2) that the employee was subject to "unwelcome" sexual harassment; (3) that the harassment complained of was based on sex; and (4) that the harassment complained of affected a "term, condition, or privilege" of employment. *Sparks v. Pilot Freight Carriers, Inc.,* 830 F.2d 1554, 1557 (11th Cir. 1987). The Court must conclude that plaintiff failed to establish a prima facie case. Testimony of plaintiff's daughter as to statements of plaintiff tends to resolve the conflicting evidence in the conclusion that plaintiff was not subject to "unwelcome" sexual harassment. The Court wishes to make clear that it is viewing the totality of the circumstances. The wearing

of a T-shirt with a "suggestive" phrase or picture on it or the use of profanity is not an invitation to sexual harassment. In the face of conflicting testimony, even assuming *arguendo* that certain instances of touching by co-workers may well have occurred and been unwelcome, plaintiff has not shown that the sexual harassment was sufficiently severe or persistent to affect seriously per psychological well-being. *Sparks*, 830 F.2d at 1561. The sexual conduct was not, from this record, sufficiently pervasive to create a hostile or offensive work environment. *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1413 (10th Cir. 1987). Thus, even if the second element of the prima facie case has been established, the fourth has not.

It has also been held that plaintiff must prove employer liability for another employee's actions under agency principles. *See Hicks*, 833 F.2d at 1417-18. One court has stated that

> the ultimate burden of proof is upon the plaintiff to additionally demonstrate respondeat superior liability by proving that the employer, through its agents or supervisory personnel, knew or should have known of the charged sexual harassment and failed to implement prompt and appropriate corrective action.
>
> *Rabidue v. Osceola Refining Co.*, 805 F.2d 611, 621 (6th Cir. 1986), *cert. denied*, 481 U.S. 1041 (1987).

Plaintiff has also failed to meet this burden of proof. From the record before the Court, those allegations which were made were investigated and admonitions given.

D. Plaintiff's Disparate Treatment Claim

Prima Facie Case

In a discharge case, based on disparate treatment, a prima facie case consists of the following: (1) plaintiff is a member of a protected group; (2) she was qualified for the position from which she was dismissed; (3) she was removed from that position; (4) she was replaced by someone not a member of the protected group. *Whatley v. Skaggs Companies, Inc.*, 707 F.2d 1129, 1135 (10th Cir.), *cert. denied*, 464 U.S. 938 (1983).

The plaintiff herein has made out a prima facie case of discrimination in her termination from employment.

The burden that shifts to the defendant requires defendant to rebut the presumption of discrimination by producing evidence of a legitimate non-discriminatory reason for the discharge of the plaintiff. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981): "The defendant need not persuade the Court that it was actually motivated by the proffered reasons. (citation omitted). It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff." *Id.* 254-255.

Defendant has met its burden of rebutting the plaintiff's prima facie case of discrimination (assuming the prima facie case has been shown) by articulating a lawful reason for its action, that is, by producing admissible evidence which would allow the Court to conclude that the employment decision had not been motivated by discriminatory animus. *Id.* 257.

The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff. *Texas Department of Community Affairs, supra,* 253. In essence, the burden of the plaintiff "to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a mere pretext for discrimination," merges with the ultimate burden of proving intentional discrimination. *Id.* 253, 256. *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 805-06 (1973); *Sabol v. Snyder,* 524 F.2d 1009, 1012-13 (10th Cir. 1975).

It has been held that

> Where, as here, the employer's asserted justification is that the employee violated a work rule, the employee must prove pretext by showing either that she did not violate the work rule or that, if she did, other employees not within the protected class who engaged in similar acts were not similarly treated.
>
> *Sparks,* 830 F.2d at 1563.

Plaintiff has failed to sustain this burden. The Court is persuaded that plaintiff did violate the work rules in question and that other employees who violated the rules were similarly treated. Plaintiff's disparate treatment claim fails.

E. Plaintiff's Retaliation Claim

Although such a claim was not emphasized by plaintiff, defendant has responded in its briefs and proposed findings to a possible retaliation claim.

To establish a prima facie case, plaintiff must show:

1. That she engaged in protected opposition to Title VII discrimination;

2. Adverse action by the employer subsequent to or contemporaneous with such employee activity;

3. A causal connection between the protected activity and the adverse employment action.

Burrus v. United Telephone Co., 683 F.2d 339, 343 (10th Cir. 1982).

While plaintiff demonstrated that she filed EEOC charges and travelled to Dallas to report alleged discrimination (both protected activities), she failed to show a causal connection between her activities and her discharge. Again, the preponderance of the evidence demonstrates that plaintiff's rule violations were the cause of her discharge.

Plaintiff's State Law "Claims"

On March 18, 1987, the Court granted defendant's motion for partial summary judgment as to plaintiff's second cause of action for emotional distress. On April 5, 1988, the Court denied plaintiff's motion to reconsider that Order. During trial, plaintiff made an oral motion pursuant to Rule 15(b) F.R.Cv.P. to add claims for fraud and intentional infliction of emotional distress. The motion was denied. Now, in her post-trial brief, plaintiff repeats the request. For the reasons stated at trial and in the previous Orders mentioned above, the Court again denies the request.

It is the Order of the Court that judgment be entered in favor of defendant and against plaintiff.

IT IS SO ORDERED this 10th day of August, 1989.

/s/ H. Dale Cook
H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LILLIAN A. GRAHAM, Plaintiff,	)	No. 86-C-516-C
vs.	)	
AMERICAN AIRLINES, INC., Defendant.	)	

ORDER

(Filed Dec. 13, 1990)

Before the Court is the motion of the plaintiff to vacate. On August 11, 1989, the Court entered judgment in this Title VII action in favor of the defendant. On August 8, 1990, plaintiff filed the present motion.

Plaintiff expressly states that her motion is made pursuant to Rule 60(b)(3) F.R.Cv.P., which provides authorization to vacate a judgment for "fraud . . . misrepresentation, or other misconduct of an adverse party." *See Anderson v. Dept. of Health & Human Services*, 907 F.2d 936, 952 (10th Cir. 1990). The motion has been made within the one year time limit imposed by the Rule.

Defendant spends some portion of its response brief addressing the distinction between intrinsic and extrinsic fraud. However, Rule 60(b)(3) abolishes that distinction. *Wilkin v. Sunbeam Corp.*, 466 F.2d 714, 717 (10th Cir. 1972), *cert. denied*, 409 U.S. 1126 (1973). While some cases have applied the old distinction in an independent action to set aside the judgment (including *Wood v. McEwen*, 644 F.2d

797 (9th Cir. 1981), which defendant cites), they are disapproved. *See* C.Wright & A.Miller, *Federal Practice and Procedure*, §2861 at 196. Consequently, defendant's assertion that perjury or discovery abuse do not permit relief under the Rule is incorrect. Therefore, the Court will consider the plaintiff's assertions without regard to the purported distinction.

To prevail on such a motion, the movant must present clear and convincing proof of fraud, misrepresentation, or misconduct. *Anderson*, 907 F.2d at 952. In her lengthy papers, plaintiff makes wide-ranging accusations of bogus engine records, discovery abuse and perjury. Upon review, the Court finds that the vast majority of these issues were dealt with during the course of the trial, or were previously denied as untimely requests for discovery, *i.e.*, reflecting lack of due diligence in raising the matters. Further, many of these allegations have now been litigated in *Graham v. American Airlines*, 89-C-815-P, an action in which summary judgment has been orally entered in defendant's favor. The errors in records which are reflected do not rise to the level of a "scheme of fraud", as plaintiff alleges. Upon full review, the Court concludes that plaintiff has not sustained her burden of proof.

Although the first paragraph of her brief refers to Rule 60(b)(3), some of the language plaintiff uses indicates that she also seeks to assert "fraud upon the court", which is a separate, albeit nebulous, concept under Rule

60(b).[1] The Tenth Circuit has stated that fraud on the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), *cert. denied*, 474 U.S. 1086 (1986). Again, plaintiff has made no such showing.

On November 21, 1990, plaintiff filed an application for leave to file supplemental brief and for limited discovery allowance. The application states that it is made pursuant to Rule 60(b)(2) F.R.Cv.P., *i.e.*, newly discovered evidence. The application is thus made beyond the one-year limitation imposed by the Rule. The Court does not believe that the time limit may be circumvented by attempting to "supplement" a timely filed motion, particularly when the new motion relies upon a different provision of the Rule. Even viewing the motion as timely, the material presented by plaintiff fails to meet the requirements for relief under Rule 60(b)(2). *See Graham v. Wyeth Laboratories*, 906 F.2d 1399, 1416 (10th Cir. 1990); *McCullough Tool Co. v. Well Surveys, Inc.*, 343 F.2d 381, 410 (10th Cir. 1965), *cert. denied*, 383 U.S. 933 (1966). The request for additional discovery is likewise far too late, for the reasons expressed in the Court's Order of May 15, 1989.

It is the Order of the Court that the motion of the plaintiff, Lillian A. Graham, to vacate is hereby DENIED.

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[1] *"Any fraud connected with the presentation of a case to a court is a fraud upon the court, in a broad sense. That cannot be the sense in which the term is used in the final saving clause of Rule 60(b)." Wright & Miller, §2870 at 253. (footnote omitted).*

It is the further Order of the Court that plaintiff Graham's application for leave to file supplemental brief and for limited discovery allowance is hereby DENIED.

IT IS SO ORDERED this 13th day of December, 1990.

/s/ H. Dale Cook

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LILLIAN A. GRAHAM, Plaintiff, v. AMERICAN AIRLINES, INC., et al., Defendants.	)	No. 89-C-815-P (Filed Feb. 21, 1991)

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. Introduction

At issue is a motion for summary judgment filed on behalf of defendants American Airlines, Inc. ("American"), George Barton and Dennis Quish. The motion for summary judgment filed by defendant Transport Workers Union of America, Local 514 (the "Union"), which incorporated the arguments, authorities and exhibits submitted by American, is at issue as well.

Defendants seek summary judgment in their favor and against plaintiff on four alternative grounds:

A. This action (hereinafter *"Graham #2"*) is an impermissible collateral attack on the August 11, 1989, final judgment entered in *Lillian A. Graham v. American Airlines, Inc.*, No. 86-C-516-C (N.D. Okla.) (hereinafter *"Graham #1"*);

B. This action is barred by the doctrines of res judicata and collateral estoppel;

C. Each of plaintiff's four claims in this action is legally insufficient; and

d. Plaintiff's claim(s) for breach of contract/ breach of duty of fair representation are barred by the six-month limitations period.

On September 20, 1990, the court entered a minute order striking the trial of this matter and stating that the court would grant summary judgment via a subsequent written order. This is the subsequent written order.

II. Standard for summary judgment

The facts presented to the court upon a motion for summary judgment must be construed in a light most favorable to the nonmoving party. *Board of Educ. v. Pico*, 457 U.S. 853, 864 (1982); *United States v. Diebold, Inc.*, 369 U.S. 654 (1962). If there can be but one reasonable conclusion as to the material facts, summary judgment is appropriate. Only genuine disputes over facts which might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Finally, the movant must show entitlement to judgment as a matter of law. *Ellis v. El Paso Natural Gas Co.*, 754 F.2d 884, 885 (10th Cir. 1985); Fed. R. Civ. P. 56(c).

Although the court must view the facts and inferences to be drawn from the record in the light most favorable to the nonmoving party, "even under this standard there are cases where the evidence is so weak that the case does not raise a genuine issue of fact." *Burnette v. Dow Chem. Co.*, 849 F.2d 1269, 1273 (10th Cir. 1988). As stated by the Supreme Court, "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the

Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.' " *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1).

The Supreme Court articulated the standard to be used in summary judgment cases, emphasizing the "requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original). A dispute is "genuine" "if a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. The Court stated that the question is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52. "The mere existence of a scintilla of evidence in support of the [party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [party]." *Id.* at 252.

Finally, the court determines whether the nonmovant has submitted evidence of the essential elements of the claim by viewing "the evidence presented through the prism of the substantive evidentiary burden" so that a reasonable factfinder could find for the nonmovant. *Id.* at 254.

III. Discussion

A. Background

Plaintiff originally filed this action on September 8, 1989, and filed an amended complaint on May 9, 1990. The gist of this action is that the defendants lied, cheated

and defrauded her during her litigation in *Graham #1* and thereby wrongfully deprived her of a favorable outcome in *Graham #1*.

B. Graham #1

Plaintiff originally sued American on May 23, 1986, asserting a Title VII[1] claim for alleged gender-based harassment and gender-based discrimination, and a pendent state claim for alleged intentional infliction of emotional distress. On March 18, 1987, the court dismissed the pendent state claim, finding the claim was preempted by federal labor law,[2] and on May 4, 1988, the court denied plaintiff's motion to reconsider the dismissal.

The Title VII claim was tried to the court in May of 1988 and March of 1989. The court entered extensive findings of fact and conclusions of law and entered judgment in favor of American and against plaintiff on August 11, 1989.

Plaintiff timely appealed from the adverse judgment. However, she later withdrew her appeal and filed, instead, a motion to vacate the judgment. Plaintiff's motion to vacate, filed August 8, 1990, was denied on December 13, 1990. Her motion to reconsider the denial was denied on January 15, 1991.

During the court of litigation in *Graham #1* plaintiff repeatedly raised the same allegations of fraud, altered or

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[1] Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

[2] The Railway Labor Act, 45 U.S.C. § 151 et seq.

concealed evidence and perjury which she now asserts as the basis of her claims in *Graham* #2. *See* Defendants' Statement of Uncontroverted Facts (Jul. 6, 1990) at Exhibit "1" (tabulation of "facts" asserted in *Graham* #2 and where those "facts" were previously raised by plaintiff and disposed of by the court in *Graham* #1); *see also* Defendants' Appendix (Jul. 6, 1990) at Exhibits 4, 6, 7, 9, 10, 11, 13, 14 and 15 (plaintiff's papers filed in *Graham* #1 that repeatedly raised allegations of fraud, altered or concealed evidence and perjury); *see also* Defendants' Appendix (Jul. 6, 1990) at Exhibits 3, 8, 17 and 18 (orders in *Graham* #1 considering and disposing of the same allegations that plaintiff now asserts as the basis of her claims in *Graham* #2).

C. Graham #2

In *Graham* #2 plaintiff asserts four claims: (1) conspiracy to injure, cheat and defraud plaintiff of her employment and her litigation rights in *Graham* #1; (2) violation of 42 U.S.C. § 1985(3) by conspiring to injure, corrupt and defeat her grievance, arbitration, employment and litigation rights in *Graham* #1; (3) violation of her due process rights by fraudulently and oppressively defeating her grievance, arbitration and employment rights in *Graham* #1; and (4) violation of the public policy of the State of Oklahoma against gender-based harassment and discrimination.

Defendants have submitted to the court, in support of their motion for summary judgment, a tabulation of all the factual allegations that plaintiff asserts to support her four claims in *Graham* #2. *See* defendants' Appendix (Jul.

6, 1990) at Exhibit 1. The tabulation identifies, item by item, each factual allegation made in *Graham #2* and identifies where the item was either ruled on by the court in *Graham #1* or was previously raised in *Graham #1* even if not specifically disposed of by the court. The tabulation is organized into five categories: (1) allegations of false testimony given in *Graham #1;* (2) allegations of acts of conspiracy between American and the Union to commit perjury in *Graham #1;* (3) allegations of alteration or forgery of evidence introduced in *Graham #1;* (4) allegations of missing evidence or concealed evidence relating to the disk discipline; and (5) a table of plaintiff's present objections to findings of fact entered in *Graham #1* on August 11, 1989.

While on the one hand plaintiff freely made allegations of fraudulent conduct on the part of defendants, on the other hand she repeatedly failed to cooperate in discovery when defendants attempted to obtain specific information. *See* Order Compelling Discovery (Apr. 18, 1990); Order Compelling Discovery (Sept. 18, 1990); *see also* Defendants' Motion for Sanctions for Failure to Cooperate in Discovery[3] (Aug. 29, 1990) and Plaintiff's Response (Sept. 14, 1990).

Viewing the evidence through the prism of the substantive evidentiary standard, even with the light shining most favorably on plaintiff, the court concludes plaintiff

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[3] The motion for sanctions in the form of claim preclusion is rendered MOOT by this order.

has failed to put forth sufficient facts from which a reasonable jury could find clear and convincing evidence of fraud. *Anderson*, 477 U.S. at 254.

D. Synopsis of ruling

The court believes summary judgment is warranted in this case on all of the alternative grounds set forth in defendants' motion and brief. However, for the purposes of this order the court concludes it is unnecessary to base its decision on each of the alternative grounds because this action is an impermissible collateral attack on the prior judgment in *Graham #1*, and further because the claims raised in this action either were, or could have been, raised in *Graham #1* and therefore are barred by the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion).

Plaintiff's two response briefs, although replete with allegations of lying, cheating and concealing evidence, are woefully inadequate in responding to defendants' legal arguments.

E. Impermissible collateral attack

Clearly, plaintiff is dissatisfied with the *Graham #1* judgment entered against her on August 11, 1989. Her remedy, however, is not to file an independent action but rather to directly appeal to the United States Court of Appeals for the Tenth Circuit[4] or to file a motion for relief

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[4] The court notes plaintiff initially did lodge an appeal with the Tenth Circuit but later voluntarily withdraw it.

pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.[5] As was stated earlier, and as is clearly manifest from defendants' tabulation of plaintiff's "factual" allegations, in *Graham #2* plaintiff alleges defendants committed perjury in *Graham #1*, conspired to deprive her of her employment and litigation rights in *Graham #1*, altered or forged documents in *Graham #1*, and concealed evidence in *Graham #1*. In sum, in *Graham #2* plaintiff alleges the *Graham #1* judgment against her was obtained by intrinsic fraud, perjury, and by forging or altering evidence. Plaintiff cannot relitigate those issues in an independent action. *Travelers Indem. Co. v. Gore*, 761 F.2d 1549, 1552 (11th Cir. 1985). Relief from intrinsic fraud must be made by direct attack in the same case in which the fraud was allegedly committed, and a party cannot use an independent action as a vehicle to relitigate issues. *Id.* Plaintiff's allegations of perjury, forged and altered documents, and concealed evidence raise an issue of intrinsic fraud, and do not provide a substantive ground for relief. *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981). "[F]or fraud to lay a foundation for an independent action, it must be such that it was not an issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party." *Travelers*, 761 F.2d at 1552. Perjury by a party does not meet this standard. *Id.*

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[5] The court notes plaintiff did file a Rule 60(b) motion in *Graham #1* on August 8, 1990. The motion was subsequently denied.

F. Res judicata and collateral estoppel

The doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion) also bar this action. These doctrines are similar to each other in that they both seek to bar unnecessary relitigation of issues. They seek to add certainty and finality to the judicial system, to conserve judicial time and resources, to avoid unnecessary litigation expense, and to protect parties from the harassment of never-ending litigation. The doctrines differ, however, in the circumstances under which they may be applied and in their scope. *Ten Mile Industrial Part* [sic] *v. Western Plains Service Corp.*, 810 F.2d 1518 (10th Cir. 1987).

Under the doctrine of res judicata (claim preclusion) "a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." *Id.* at 1522 (quoting *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 n.5 (1979)). The doctrine "bars the relitigation of issues that were *or could have been* raised in the first action." *Id.* at 1522-23 (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (emphasis added)).

The four elements that are a prerequisite to the use of the doctrine of res judicata (claim preclusion) to bar a subsequent suit are:

(1) There must have been a final judgment on the merits;

(2) The decision must have been rendered by a court of competent jurisdiction;

(3) The parties, or those in privity with them, must be identical in both suits; and

> (4) The issues in the subsequent suit must be the same issues which were, or could have been, raised in the prior suit.

Id.; I.A. Durbin, Inc. v. Jefferson National Bank, 793 F.2d 1541, 1549 (11th Cir. 1986); *Johnson v. United States,* 576 F.2d 606, 611 (5th Cir. 1978), *cert. denied,* 451 U.S. 1018 (1981). Applying the above-cited law to the facts of this case, the court finds that extensive findings of fact and conclusions of law, together with a final judgment on the merits, were entered on August 11, 1989, in *Graham #1,* in the United States District Court for the Northern District of Oklahoma, a court of competent jurisdiction. The plaintiff was the same in *Graham #1* and *Graham #2.* All the defendants in Graham #2 were also defendants in *Graham #1.* The issues raised in *Graham #2* either were, or could have been, raised in *Graham #1.* Accordingly, the court finds that the doctrine of res judicata (claim preclusion) bars this subsequent action.

Under the doctrine of collateral estoppel (issue preclusion), "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Ten Mile Industrial Park,* 810 F.2d at 1523 (quoting *Allen,* 449 U.S. at 94). The elements of the doctrine of collateral estoppel (issue preclusion) are:

> (1) the issue sought to be precluded in the second suit must be identical to the issue decided in the first suit;
>
> (2) the issue must actually have been litigated in the first suit;

(3) there must have been a valid and final judgment in the first suit;

(4) the determination of the issue must have been material to the prior judgment; and

(5) the party against whom the prior decision is being asserted must have had a full and fair opportunity to litigate the issue in the first suit.

Goss v. Goss, 722 F.2d 599, 604 (10th Cir. 1983); *I.A. Durbin*, 793 F.2d at 1549; *Precision Air Parts, Inc. v. Avco Corp.*, 736 F.2d 1499 (11th Cir. 1984), *cert. denied*, 469 U.S. 1191 (1985). Applying these elements to the facts of the instant case, the court finds that to the extent *Graham* #2 raises issues relating to gender-based harassment or discrimination in plaintiff's employment, all the elements of the doctrine of collateral estoppel (issue preclusion) are met and, accordingly, plaintiff is barred from relitigating those issues.

IV. Conclusion

For the reasons set forth above, defendants American, Barton and Quish's motion for summary judgment, filed July 6, 1990, is **GRANTED**, and defendant Union's motion for summary judgment, filed July 18, 1990, is **GRANTED**. This resolves the lawsuit.

A judgment will be separately filed.

IT IS SO ORDERED THIS 21st DAY OF FEBRUARY 1991.

/s/ L.R. Phillips
LAYN R. PHILLIPS
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LILLIAN A. GRAHAM, Plaintiff-Appellant, v. AMERICAN AIRLINES, INC., Defendant-Appellee.	)	No. 91-5060 (D.C. No. 86-C-516-C) (N.D. Okla.)

ORDER

(Filed April 7, 1992)

Before MOORE and BRORBY, Circuit Judges.

This matter comes before the court on defendant American Airlines' Motion For Sanctions For Filing A Frivolous Appeal. Defendant claims that sanctions are appropriate because Plaintiff filed and dismissed a frivolous appeal and because Plaintiff has engaged in unjustifiable multiplicative litigation.[1]

"To deter frivolous and abusive litigation and promote justice and judicial efficiency, the federal courts are empowered to impose monetary sanctions, by statutes and the rules of civil and appellate procedure as well as their inherent right to manage their own proceedings."

[1] Plaintiff filed this appeal, moved for voluntary dismissal after the parties had briefed a jurisdictional issue raised by Defendant, and the appeal was dismissed as a matter of course.

Braley v. Campbell, 832 F.2d 1504, 1510 (10th Cir. 1987). *See also Christensen v. Ward*, 916 F.2d 1462, 1469 (10th Cir.), *cert. denied*, 111 S. Ct. 559 (1990); *Atkinson v. O'Neill*, 867 F.2d 589, 590 (10th Cir. 1989). Federal R. App. P. 38 authorizes an award of costs and damages, including attorney's fees, for bringing a frivolous appeal. Further, 28 U.S.C. § 1927 provides that an attorney "who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

The record in this case is replete with multiple and vexatious filings by Plaintiff, including a previous appeal to this court filed and voluntarily dismissed by Plaintiff.[2] We have reviewed the record, but Plaintiff's litigation before the district court consisted of filings so numerous and multiplicative that we will not attempt to recap the proceedings. Pursuant to statutory authority, as well as this court's inherent power to deter frivolous and abusive litigation, we have determined that sanctions are appropriate in this case.[3] We remand, however, for the district court to determine the appropriate amount of attorney's fees and costs and how those fees and costs should be apportioned between Plaintiff and her attorney.

---

[2] That appeal was dismissed by Plaintiff so that she could relitigate the same issues by yet another procedural means before the district court. Similarly, the current appeal was voluntarily dismissed by Plaintiff so that she could pursue her claims, yet again, in state court.

[3] Plaintiff's counter motion for sanctions is hereby denied.

Defendant's motion is hereby GRANTED, and this case is REMANDED to the district court for proceedings consistent with this order.

Entered for the Court

/s/ Robert L. Hoecker
ROBERT L. HOECKER, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC. Plaintiff, v. CRAIG TWEEDY and LILLIAN GRAHAM, Defendants.	)	Case No. 91-C-762-B

ORDER

(Filed July 13, 1992)

This matter comes on for consideration of Defendants' Second Motion For Reconsideration, filed May 27, 1992, of this Court's Order of March 31, 1992, wherein the Court enjoined Defendants Craig Tweedy and Lillian Graham "from proceeding further in the state court proceeding styled ***Lillian A. Graham v. American Airlines, Inc., George Barton, Buck Williams and Wayne Ping, Agent for United Transport Workers Union of America,*** CJ-91-4125, D.C. Tulsa County, State of Oklahoma. These Defendants are further enjoined from instigating, against American and those parties in privy thereto to the claims and issues herein, any further action or proceeding, in either state or federal court or any court or administrative tribunal, on these same claims and/or issues. Any violation of the Court's injunction by either Defendant will subject the violator to appropriate sanctions." Also

included in Defendants' Second Motion For Reconsideration is Defendants' request that the Court "reconsider and vacate its Order of May 21, 1992".[1]

Also, for consideration herein is Defendants' appeal from (objection to) the May 27, 1992 Report and Recommendation of the Magistrate Judge and Defendants' Motion For Stay pending the decision of the Tenth Circuit Court of Appeals in Case No. 92-5107 on the Petition for Writ of Mandamus against Thomas R. Brett, United States District Judge. By Order filed June 15, 1992, the Tenth Circuit Court of Appeals denied Defendants' Petition for Writ of Mandamus on the ground the "[P]etitioners have not satisfied the requirements for invoking mandamus relief." On June 30, 1992, the Clerk of the Northern District of Oklahoma received a copy of Defendants' Petition for Rehearing With Suggestion En Banc in Case No. 92-5107 apparently now pending before the Tenth Circuit Court of Appeals.

The Court is fully familiar with this matter and has carefully examined Defendants' various pleadings in support of their Second Motion For Reconsideration, Appeal from the Magistrate Judge's Amended Report and Recommendation of May 27, 1992, and Motion For Stay, and

---

[1] This "Order" is a Report and Recommendation of the Magistrate Judge, recommending that the Court grant American's request for $3,912.01 in fees, expenses and costs against Tweedy. The Magistrate Judge filed an Amended Report and Recommendation on May 27, 1992, recommending the Court grant American's request for $36,421.01 in attorney fees, as well as costs in the amount of $3,912.01, for an aggregate award against Tweedy of $40,333.01.

Plaintiff's responses thereto. The Court concludes Defendants' pleadings essentially re-urge and re-argue the same issues and arguments presented by these Defendants in earlier pleadings. The Court further concludes these Defendants have presented no substantial reasons why this Court should reconsider, vacate and/or modify its previous Order of March 31, 1992. Further, the Court concludes Defendants' appeal from the Magistrate Judge's Amended Report and Recommendation of May 27, 1992, should be denied. Defendants failed to appear at the hearing before the Magistrate Judge held April 28, 1992, nor did Defendants file a response by April 20, 1992 (or at anytime prior to the hearing) relative to excess costs, expenses and attorneys fees incurred in this action as directed by this Court in its Order of March 31, 1992.

The Court further concludes Defendants' Motion For Stay should be denied. Defendants have cited no authority for entering a stay nor offered a bond staying this Court's injunctive relief granted American in its Order of March 31, 1992.

The Court concludes Defendants' Second Motion For Reconsideration should be and the same is herewith DENIED. The Court further concludes Defendants' Motion For Stay should be and the same is herewith DENIED. The Court further DENIES Defendants' appeal of (objection to) the Magistrate Judge's Amended Report and Recommendation of May 27, 1992. The Court herewith affirms and adopts the Magistrate Judge's Amended Report and Recommendation of May 27, 1992.

IT IS SO ORDERED this 13th day of July, 1992.

/s/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC. Plaintiff, v. CRAIG TWEEDY and LILLIAN GRAHAM, Defendants.	)	Case No. 91-C-762-B

JUDGMENT

(Filed July 13, 1992)

In accord with the Order entered simultaneously herein, adopting and affirming the Magistrate Judge's Amended Report and Recommendation of May 27, 1992, wherein it was recommended the Court grant Plaintiff's, American Airlines, Inc., request for $36,421.01 in attorneys fees and costs in the amount of $3,912.01, Judgment is herewith entered in favor of Plaintiff, American Airlines, Inc., and against the **Defendant, Craig Tweedy**, in the amount of $36,421.01 for attorneys fees and costs in the amount of $3,912.01, plus post-judgment interest on said amounts at the annual rate of 4.11% from the date hereof until paid.

DATED this 13th day of July, 1992.

/s/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC. Plaintiff, v. CRAIG TWEEDY and LILLIAN GRAHAM, Defendants.	)	Case No. 91-C-762-B

NOTICE OF APPEAL

(Filed Aug. 13, 1992)

The Defendants, Craig Tweedy and Lillian Graham, hereby, give notice of their intent to appeal to the United States Court of Appeals for the Tenth Circuit from the Order of March 31, 1992 and from the Order and Judgment of July 14, 1992, and exercise and preserve such statutory right of appeal, under the clear and present threat of contempt for violating the Order of March 31, 1992 by so appealing.

/s/ Craig Tweedy
CRAIG TWEEDY, OBA #9145
Pro Se
202 Wells Building
Sapulpa, OK 74066
918-224-2222
ATTORNEY FOR CO-DEFENDANT
LILLIAN GRAHAM

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of August, 1992, a true and correct copy of the foregoing instrument was deposited in the U.S. Mails, with postage prepaid, and addressed to Reuben Davis and Frederic N. Schneider III, 500 Oneok Plaza, 100 West 5th Street, Tulsa, OK 74103.

/s/ Craig Tweedy

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CRAIG TWEEDY and LILLIAN A. GRAHAM, Appellants,	)	No. 92-5159
vs.	)	
AMERICAN AIRLINES, INC., Appellee.	)	

STIPULATION FOR DISMISSAL

(Filed Aug. 27, 1992)

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties that the above entitled appeal is hereby withdrawn and dismissed with prejudice as to the Appellant, Lillian Graham only. Appellee, American Airlines, Inc., specifically reserves its right to proceed against Craig R. Tweedy with any and all claims, legal actions, judgments and orders, including but not limited to, American's pending claim for sanctions against Craig R. Tweedy. It is further stipulated that the Court's Orders of March 31, and July 14, 1992 shall remain in effect and constitutes the final adjudication of the merits of the instant action. Appellant Graham further stipulates that she will not file any further claims, motions, petitions, or other requests for relief related in any way to the allegations and claims involved in this action.

Appellant Graham further acknowledges that she has executed this Stipulation For Dismissal with prejudice

freely, voluntarily, without any mental or economic pressure, duress or coercion, and only after having had adequate opportunity to fully understand and consider this matter with the assistance of legal counsel of her own free choosing.

DATED THIS 14th DAY OF AUGUST, 1992.

/s/ Lillian Graham
Lillian A. Graham
Plaintiff

/s/ Reuben Davis
Reuben Davis
Frederic N. Schneider III
Boone, Smith, Davis,
Hurst & Dickman
500 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 587-0000
Attorneys for
American Airlines, Inc.

APPROVED IN OPEN COURT THIS 14th DAY OF AUGUST, 1992.

/s/ John Leo Wagner
UNITED STATES
MAGISTRATE JUDGE

IN THE DISTRICT COURT IN AND
FOR TULSA COUNTY
STATE OF OKLAHOMA

LILLIAN A. GRAHAM, Plaintiff, v. AMERICAN AIRLINES, INC., et al., Defendants.	)	Case No. CJ-91-04125

ORDER

(Filed Sept. 8, 1992)

On the 31st day of August, 1992, there came on for hearing the Defendants' Motion for Summary Judgment and For Sanctions against the Plaintiff, Lillian Graham and her attorney of record, Craig Tweedy. Reuben Davis and Frederic N. Schneider III appeared on behalf of the Defendants. Craig Tweedy appeared in person. Lillian Graham appeared in person pursuant to subpoena issued by Mr. Tweedy. The Court, after hearing argument of counsel, and being fully advised in the premises, finds and enters the following Order:

1. On August 19, 1992, a Stipulation for Dismissal With Prejudice signed by the Plaintiff, Lillian Graham, and American Airlines, Inc. was filed in the case. The Court further finds that the Motion for Summary Judgment filed by the Defendants should be sustained. The Court finds that Defendants' Motion for Sanctions should be denied at this time. The Court will address the issue of sanctions if this matter is reinitiated in this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment be and the same is hereby granted and the matter is hereby dismissed *with prejudice.*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Motion for Sanctions should be and the same is hereby denied at this time. The Court will address the issue of sanctions if this matter is reinitiated in this Court.

DATED this 8 day of September, 1992

/s/ Donald C. Lane
JUDGE OF THE
DISTRICT COURT

APPROVED AS TO FORM:

Craig Tweedy
202 Wells Building
Sapulpa, Oklahoma 74066
(918) 224-2222

/s/ Reuben Davis
Reuben Davis
Frederic N. Schneider III
500 ONEOK Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 587-0000
ATTORNEYS FOR AMERICAN AIRLINES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC.	)	
Plaintiff,	)	
	)	
v.	)	Case No.
CRAIG TWEEDY and	)	91-C-762-B
LILLIAN GRAHAM,	)	
	)	
Defendants.	)	
	)	

ORDER

(Filed Sept. 15, 1992)

This matter comes on for consideration of Defendant Tweedy's Motion for Relief From the Court's Judgment of July 13, 1992.

Also for consideration herein is Defendants', Craig Tweedy and Lillian Graham, Motion for Relief From the Court's April 28, 1992 Determination Taxing Costs Against Defendant Graham.

Defendant Tweedy argues the attorneys fee and cost assessment decreed by the July 13 Judgment "is unjustly excessive and awards inappropriate fees and costs." Further, Tweedy argues the "sanction was imposed for a vexatious claim, which claim did not exist until the sanction was imposed on March 31, 1992 (the date of the Court's Order considering and granting American Airlines, Inc.'s request for preliminary and permanent injunctions).

As stated in earlier Orders, the Court is fully familiar with this matter. The Court has carefully examined arguments in support of and in opposition to Defendant Tweedy's Motion for Relief From the Court's Judgment of July 13, 1992. Having made such examination, the Court concludes, as it has in the past, that Defendant's pleadings essentially re-urge and re-argue the same issues and arguments presented in earlier pleadings. The Court further concludes these [sic] Defendant Tweedy has presented no substantial reasons why this Court should reconsider, vacate and/or modify its Judgment of July 13, 1992. The Court finds Tweedy's arguments wholly lacking in merit.

The Court next considers Defendants' Motion for Relief From the Court's April 28, 1992 Determination Taxing Costs Against Defendant Graham[1]. The Court concludes Defendants' appeal from the Court's April 28, 1992 Order taxing costs against Defendant Graham in the amount of $3,877.70, should be denied. As stated in an earlier Order, Defendants failed to appear at the hearing before the Magistrate Judge held April 28, 1992, and did not file a response by April 20, 1992 (or at anytime prior to the hearing) relative to excess costs, expenses and attorneys fees incurred in this action as directed by this Court in its Order of March 31, 1992. Additionally, Defendants failed to seek review of the Clerk's taxation of costs within 5 days of the Clerk's decision, as provided by Rule 54(d), F.R.Civ.P.. Moreover, Defendants did not seek an enlargement of the 5 day requirement. Rule 6(b),

---

[1] This determination was made by Clerk of the Court, Richard Lawrence.

F.R.Civ.P. The Court concludes Defendants' Motion for Relief From the Court's April 28, 1992 Determination Taxing Costs Against Defendant Graham is also without merit.

The Court concludes Defendant Tweedy's Motion for Relief From the Court's Judgment of July 13, 1992, and Defendants' Motion for Relief From the Court's April 28, 1992 Determination Taxing Costs Against Defendant Graham, both should be and the same are hereby DENIED.

IT IS SO ORDERED this 15 day of September, 1992.

/s/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE: GRIEVANCE AGAINST)
) M-267
CRAIG TWEEDY, ESQ.)

ORDER AND JUDGMENT

(Filed Jan. 15, 1993)

Based upon the Findings of Fact and Conclusions of Law entered this date, it is ORDERED that Craig Tweedy, Esq. Attorney at Law, is suspended from practice before this Court for a period of three (3) years from this date.

IT IS FURTHER ORDERED that any reinstatement shall not be automatic but shall be upon consideration of an application which may not be submitted until the expiration of the three (3) year period of suspension.

DATED this 15th day of January, 1993.

/s/ James O. Ellison
JAMES O. ELLISON,
Chief Judge
UNITED STATES
DISTRICT COURT

/s/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES
DISTRICT JUDGE

/s/ H. Dale Cook
H. DALE COOK
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE: GRIEVANCE AGAINST)
) M-267
CRAIG TWEEDY, ESQ.)

ORDER

(Filed Jan. 15, 1993)

A panel consisting of the three District Judges of the Northern District of Oklahoma, Judges Ellison, Brett and Cook conducted a de novo address of the Report of the Admissions and Grievance Committee of this Court regarding the grievance against Craig Tweedy, Esq., Respondent.

The panel conducted a pre-hearing conference with Respondent on October 13, 1992 and a hearing held on December 7, 1992. Respondent was allowed to supplement the record following the hearing.

These proceedings have been made public at the request of Mr. Tweedy.

The Panel has considered the Report and Recommendation of the Admissions and Grievance Committee, together with all documentary evidence, briefs, pleadings, exhibits and all arguments presented to the Panel by the Respondent.

The Panel enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The grievance was filed in October of 1991 against Craig Tweedy, Esq. ("Respondent") by Reuben Davis, Esq., Frederic N. Schneider, III, Esq., Kimberly A. Lambert, Esq. and American Airlines, ("Grievants").

2. The grievance alleges that Respondent engaged in unethical conduct by filing frivolous and vexatious pleadings addressing issues previously adjudicated to final judgment.

3. This Court and the Tenth Circuit have previously sanctioned Respondent for bringing frivolous, vexatious proceedings in the following cases:

   a. *Sooner Products v. McBride,* No. 85-1033 (10th Cir. Apr. 1, 1986). The Tenth Circuit stated:

      > The [District] court found that under 28 U.S.C. § 1986 [sic] and Fed.R.Civ.P., 11, the actions of attorneys Craig Tweedy and [appellants] were vexatious and unreasonable, needlessly multiplying the proceedings and incurring excess costs.
      >
      > * * *
      >
      > Accordingly, we affirm the award of attorneys' fees and costs assessed individually against appellants as a sanction for their abuse of judicial process.

   b. *The Burggraf Corporation v. Goodyear Tire and Rubber, Inc.,* No 90-50-91. (10th Cir. Nov. 21, 1990). The Court held:

> The appeal in the instant case is frivolous in every respect. This is the sixth appeal concerning this case and the second that has been found to be frivolous. It is apparent to this court that Plaintiffs' actions in filing six appeals and making patently frivolous appeals establishes a pattern that cannot be tolerated. It is likewise obvious that Defendants have been put to unnecessary costs, fees and expenses as a result of this appeal. It is therefore ordered that this matter is remanded to the district court for the sole purpose of determining the amount of sanctions to be imposed for the prosecution of this frivolous appeal and determining who should pay the sanctions, i.e., counsel for Plaintiffs, or Plaintiffs, or both.

c. *Graham v. American Airlines,* 731 F.Supp. 1494 (N.D. Okla. 1989).

Graham I

This action was filed by Lillian Graham alleging sex discrimination, sexual harassment and intentional infliction of emotional distress.

Summary judgment was granted in the plaintiff's claim for intentional infliction of emotional distress. The court after a lengthy trial granted judgment in favor of the defendant and against Graham on the Civil Rights claim. One of the principal issues during trial was whether plaintiff had damaged a fourth stage turbine

disk. Defendant produced engine records for the turbine disk. The disk repair became the major issue of the later stage of the trial.

In its Findings of Fact the court found that plaintiff had damaged the disk.

Graham appealed, but later dismissed the appeal and filed a Rule 60(b) motion to vacate the final judgment based on fraud on the court. The fraud alleged was altered and forged engine records and perjury. The court denied the Rule 60b motion.

Graham again filed an appeal which was later voluntarily dismissed. The defendant moved for sanctions which were granted by the Tenth Circuit which stated, inter alia:

> The record in this case is replete with multiple and vexatious filings by Plaintiff, including a previous appeal to this court filed and voluntarily dismissed by Plaintiff. We have reviewed the record, but Plaintiff's litigation before the district court consisted of filings so numerous and multiplicative that we will not attempt to recap the proceedings. Pursuant to statutory authority, as well as this court's inherent power to deter frivolous and abusive litigation, we have determined that sanctions are appropriate in this case.

Graham v. American Airlines, Inc., No. 91-5060 (10th Cir. Apr. 7, 1992) (Ordered granting sanctions).

d. *Graham v. American Airlines*, No. 89-C-815-P.

Graham II

Respondent filed Graham II in state court in 1989 – four weeks after the trial court entered its Findings and Conclusions in Graham I. Defendant removed to this Court. An amended complaint was filed alleging fraud on the Court. The fraud alleged engine record forgery, perjury by defense witnesses and conspiracy.

The Court granted summary judgment to defendant and stated, inter alia:

> Plaintiff's papers filed in *Graham #1* considered and disposed of the same allegations that plaintiff now asserts as the basis of her claim in *Graham #2*.

Graham v. American Airlines, No. 89-C-815-P (N.D. Okl. Sept. 20, 1990) (Order granting summary judgment).

e. *Graham v. American Airlines, et al.*, No. CJ-91-4125 (District Court of Tulsa County, Oklahoma).

Graham III

Within eight months of the summary judgment in *Graham II* Respondent filed *Graham III*. The claim was based on defendant's "frivolous representations" that Graham had damaged the disk in 1988 and "fraudulent concealment" that the disk had been overhauled in 1982 and not in 1985. The claims of *Graham III* were essentially the same as those decided in *Graham I* and precisely those decided in *Graham II*.

American brought an action styled *American Airlines v. Tweedy, et al.*, No. 91-C-762-B seeking injunctive relief

against Tweedy and Graham in order to prevent relitigation of issues previously decided. The injunction was granted and the trial court stated:

> The Court views the pending state court proceeding as essentially vexatious and baseless . . .
>
> One lawsuit to pursue her alleged rights was appropriate. Two lawsuits are inappropriate. Three lawsuits are clearly vexatious.

American Airlines v. Tweedy, et al., No. 91-C-762-B (N.D. Okl. Mar. 31, 1992) (Order granting injunction and award of sanctions). The trial court imposed sanctions, including attorneys fees and costs totaling $40,333.01.

4. Respondent, by his filings and arguments before this Panel has consistently demonstrated an inability to understand closure – the barring of a claim after an adverse decision.

5. Respondent has repeatedly and without justification attempted to relitigate claims after an adverse judgment by claiming fraud on the court.

6. Respondent has brought frivolous and vexatious proceedings in this court.

7. Respondent has pursued a course of conduct which demonstrates a pattern and practice of abuse of legal process prejudicial to the administration of justice.

8. Because of these Findings the Respondent has clearly violated the Oklahoma Rules of Professional Conduct.

CONCLUSIONS OF LAW

1. Any Finding of Fact above which might also be characterized as a Conclusion of Law is incorporated herein.

2. Rule 30, Local Rules for the Northern District of Oklahoma:

> Attorneys practicing in this Court are expected to conduct themselves in accordance with the Model Rules of Professional Conduct of the American Bar Association, as adopted by the Oklahoma Supreme Court as the standard of conduct of all members of the Oklahoma Bar Association. ("Oklahoma Rules of Professional Conduct").

3. Rule 3.1 of the Oklahoma Rules of Professional Conduct provides:

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein unless there is a basis for not doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

4. Rule 8.4 of the Oklahoma Rules of Professional Conduct provides:

> It is professional misconduct for a lawyer to:
>
> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

* * *

(d) engage in conduct that is prejudicial to the administration of justice.

5. Local Rule 4(j):

Discipline. Any member of the Bar of this Court guilty of a violation of the prescribed oath of office, or of a violation of the disciplinary rules set forth in the Code of Professional Responsibility of the American Bar Association, or of any conduct unbecoming a member of the Bar of this Court, shall be subject to reprimand, suspension, disbarment, or such other disciplinary action as the Court deems appropriate.

6. The Court concludes Respondent's conduct violated the above-quoted rules. An Order and Judgment directing appropriate punitive action and sanctions against Respondent Craig Tweedy, Esq., shall be filed contemporaneous herewith.

ORDERED this 15th day of January, 1993.

/s/ James O. Ellison
JAMES O. ELLISON,
Chief Judge
UNITED STATES
DISTRICT COURT

/s/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES
DISTRICT JUDGE

/s/ H. Dale Cook
H. DALE COOK
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AMERICAN AIRLINES, INC., Plaintiff – Appellee,	)	No. 92-5159
v.	)	(D.C. No. 91-CIV-0762-B)
CRAIG TWEEDY, Defendant – Appellant.	)	(N. D. Oklahoma)

ORDER

Filed: January 26, 1993

Before ANDERSON, TACHA, and BRORBY, Circuit Judges.

This appeal is before the court based on a motion by Plaintiff American Airlines to dismiss the appeal for lack of jurisdiction, which contains a request for sanctions against Defendant Tweedy, defendant's response thereto, and the preliminary record on appeal.*

Upon consideration whereof, the portion of Defendant Craig Tweedy's appeal that pertains to the district court judgment entered on July 14, 1992, which awarded

* On September 16, 1992, this court entered an order dismissing the appeal as to Defendant Lillian Graham and granting Defendant Craig Tweedy's motion to withdraw as counsel for Lillian Graham.

plaintiff attorney fees and costs against defendant, is dismissed for lack of appellate jurisdiction. The August 13, 1992 notice of appeal was filed while a timely combined motion under Fed. R. Civ. P. 59(e) for relief was pending before the district court. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982); *Dalton v. First Interstate Bank of Denver*, 863 F.2d 702, 703-704 (10th Cir. 1988); *Skagerberg v. Oklahoma*, 797 F.2d 881, 883 (10th Cir. 1986).

Upon further consideration, the court reserves judgment on the remaining jurisdictional issue contained in the motion to dismiss. The remaining jurisdictional issue, the motion to dismiss, and the response in opposition are referred to the panel selected to dispose of this appeal.

Briefing on the merits may proceed. Defendant Craig Tweedy's opening brief and appendix shall be served and filed 40 days after the date on this order. Subsequent briefing shall proceed in accordance with 10th Circuit Rules of Court.

Entered for the Court

/s/ Robert L. Hoecker
ROBERT L. HOECKER, Clerk

Supreme Court, U.S.
FILED
MAR 5 1993
OFFICE OF THE CLERK

(3)

No. 92-1070

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1992

In Re CRAIG TWEEDY, Petitioner

REPLY TO OPPOSITION BRIEF AND IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

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No. 92-1070

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CASE NO. 92-1070

IN RE CRAIG TWEEDY, PETITIONER

REPLY BRIEF

This reply by the Petitioner, Craig Tweedy, shows that the Opposition Brief of American Airlines, Inc. ("AA") distorts material record facts and claim words to support bad faith and conclusory arguments in defense of the plain usurpations and abuses of the decisions below. Such bad faith tactics operate to justly confess the warrant of extraordinary mandamus relief sought by the Petition, upon this proper showing of the actual record and law.

A. THE DISC OVER ENGINE WORD GAME CONFESSES THE PETITIONER'S CLEAR ENTITLEMENT TO MANDAMUS RELIEF.

The extraordinary mandamus relief entitled by this Petition is confessed by AA's improper arguments based upon

the disc word. AA mentions a 1985 turbine disc repair and/or disc disipline 20 times, while the important and lawfully controlling engine word was mentioned only in Footnote 3, at page 20 of its brief.

It is equally significant that such engine word was entirely avoided and unmentioned in AA's injunctive pleadings (Petition, at 15, App., at 80-116), and by Judge Brett's March 31, 1992 injunctive order (Id., at 16, Appendix A). Moreover, such engine word may not be found in the conclusory decisions, plus oppressive sanction, rendered for the Court of Appeals below (Appendix B, C & D).

The Petition and this Reply are based upon the engine word. This unmasking of such disc word game will demonstrate the plain abuses and usurpations of Federal Rules power and

prohibited authority under the Anti-Injunction Act, 28 U.S.C. §2283, which were, in effect, endorsed by conclusory decisions. It shows the denials of appeal and due process rights, which add materially to such picture.

Such unmasking commences with renewed emphasis that AA and Judge Brett did not mention the engine word in the injunctive matter below. Yet, AA's first mention is made to this Court by AA's bold footnote statement that "the engine" was "repaired" in 1985.

1. Important Questions Arise

If the engine was, in fact, repaired, or overhauled by AA in 1985, and if its pretext actually formed an issue formerly decided in federal court, these important and telling questions arise:

Why was the discovered State Court fraud claim, or Graham III, enjoined by

use of the disc word, rather than the engine word label and factual substance stated and intended by the pleaders (Petition, at 9-12, App., at 58-62), under the authorities cited at pages 42-46 of the Petition?

Why does AA, at page 8, or C-2 of its brief, improperly state to this Court that such claim asserts discovered 1985 turbine disc repair fraud and seeks to improperly relitigate the disc discipline and fraud issue decided in Graham I and Graham II?

Is AA, as a State Court defendant, again, unfairly pleading for such actual claim, to mask and defend the endorsed judicial usurpations and abuses, which were unlawfully boot-strapped to a word game?

Does not the actual State Court fraud claim (Petition, at 9-12, App. at 58-62) plainly plead the discovered

extrinsic and material fraud of AA's former pretext of its 1985 overhaul of engine S/N 644980, which sought to prove the non-existence of such engine overhaul and Ms. Graham's former good faith reliance?

Why did AA induce Judge Brett (Petition, at 16-18, Appendix A, at 1-2, 11-13, 19-20) to impose the disc word substitution for the State Court claim for the discovered extrinsic and material fraud of AA's pretext of AA's 1985 overhaul of engine S/N 644980 (Petition, at 9-12, App. at 57-79)?

Why was the just intent of Rule 8(f) authority usurped to arbitrarily substitute disc repair and disc discipline and alter the engine overhaul claim label and substantive meaning stated and intended by the pleaders (Id., at 17), in a manner contrary to the settled authorities (Petition, at

35-46)?

Why was this Petitioner unfairly sanctioned by both Courts below (Petition, at 18, 24, Appendix A, at 23-24 & Appendix D) for sponsorship and/or resistance to the disc relitigation claim and word game, which was needed to creatively grab a relitigation exception under the Act, as evidenced by Judge Brett's March 21, 1992 Injunctive Order (Id., Appendix A, at 1-2, 11-12, 19-20))?

Were not the enjoining of appeal rights and threat of imprisonment for seeking relief (Petition, at 19-21) extraordinary abuses of power running up the red flag for mandamus attention to the plain usurpations of such unfairly predisposed disc word game and prohibited injunctive authority?

2. The Telling Answers Arise

The telling fact answer to such

extraordinary questions is found in AA's first and fatal mention of engine, at Footnote 3. AA did not and could not state that the pretext of the 1985 overhaul of engine S/N 644980 became an issue formerly decided. Moreover, AA's own Appendix 8-30 of the Graham I decision shows no mention of such 1985 engine overhaul, or its pretext. Such void clearly reveals that such material engine overhaul pretext had been accepted by the Court, Ms. Graham and this Petitioner.

Additionally, the record shows that good faith reliance upon such pretext was pled in the actual State Court claim, which stated the discovered extrinsic fraud of such engine overhaul pretext (Petition, at 9-10, App. 61)

Such facts control in explaining the claim disappearance by the disc word and injunctive fiats, under Chick Kam

Choo v Exxon (1988), 108 S.Ct. 1684. In such case, this Court, at 1689-1690, settled the intent of the relitigation exception to the Anti-Injunction Act, 28 U.S.C. §2283, as providing that the state proceeding must seek to relitigate issues, which have "actually been decided by the federal court * * this prerequisite is strict and narrow."

Thus, AA's first mention of engine, but glaring inability to assert that the pretext of the 1985 engine overhaul had been an issue formerly raised and decided operates to confess the unlawful motives for the disc over engine and injunctive fiats. It admits mandamus strength of the Petition. It highlights the importance of the wholly conclusory Court of Appeal decisions, which, in effect, endorse such disc word game and powerless injunctive excesses and abuses, while operating to obstruct this Court's writ

review.

3. AA Knows No Limits

It appears that AA seeks to cover such disc word game and excuse the plain usurpations of power in a different manner. AA makes undue mention of Graham II Summary Judgment of February 21, 1991, upon res judicata arising from Graham I. In so doing, AA did not, in required candor, inform the Court that such summary judgment had been earlier rendered by the Graham II Minute Order of September, 1990 (Appendix "E" hereto).

It appears that the February 21, 1991 date was designed to suggest improper engine fraud relitigation. It suggests that the 1985 engine overhaul fraud claim, pled as being discovered on December 18, 1990 (Petition, App., at 67-68) and urged by the Graham I Rule 60(b) motion of December, 24, 1990, but not heard for being untimely filed (Id.,

at 14), was among the claims and issues decided on February 21, 1991 in Graham II. Of course, mention of the true September 20, 1990 date would have spoiled such ploy.

Moreover, the record shows that such State Court Petition and its fraud claim (Id., at 61, 67-68) plainly states that Ms. Graham was seeking to secure the actual records of the 1985 engine overhaul, the then accepted pretext, well beyond the September 20, 1990 conclusion to Graham II.

CONCLUSION

The appearance of AA's date design equals its actual disc word design and the exceptional usurpations of Federal Rules power operating to cover the grabbing of prohibited relitigation authority under the Act. It seeks to cover the conclusory decisions rendered for the Court of Appeals, which obstruct

writ review. Such arrogant attempt to deceive shows utter disdain for law settled by this Court.

It operates to absolutely confess the Petition and the chilling usurpations and abuses demanding the extraordinary review and mandamus relief from this Supreme Court.

B. THE PETITION FOR MANDAMUS IS PROPER, BECAUSE THE DEATH-KNELL AGAINST AN ADEQUATE RIGHT OF APPEAL TO THE COURT OF APPEALS HAS BEEN SOUNDED BY ITS CONCLUSORY DECISIONS AND SANCTIONS.

The foregoing proposition statements affirm this proposition.

1. The Chilling Appearances.

Further support arises from the chilling appearances of AA's select influence with inside abusers of the Courts below by a disc word game. It suggests AA brag of select system means to poke major holes into our federal judicial system of justice and United States Constitution.

The engine word shows that Judge Brett plainly usurped and/or contravened the settled law and due process, as cited in the Petition. Why so, plus the enjoining of appeal rights and threat of imprisonment for seeking relief, except for expected protection? Such chilling facts and appearances reflect poorly on someone at the Court of Appeals below, but possibly not one of its judges.

AA boldly tells this Court that the Petitioner has an adequate appeal alternative, and, at page 9, points to the August 13, 1992 notice of appeal from Judge Brett's March 31, 1992 injunction. However, AA does not mention its urging of imprisonment for the seeking of mandamus relief as a "substitute for the appeal from the March 31, 1992 Order", which enjoined any relief (Petition, at 20-21, App. at 171-175). Why did Judge Brett ratify such threat of imprisonment,

by failing to deny such threat to date? Such point and the disc word demonstrate AA's outrageous influence with and select expectations from both Courts below, with more to follow.

The terrified Lillian Graham gave up her claim and appeal rights, under threatened duress of imprisonment and chilling appearances of AA's unlawful influence with the predisposed Courts below. Such means of terror may not happen in a civilized society, but it did below.

Moreover, this Petitioner's rights have been unfairly and blindly sanctioned by conclusory Court of Appeals decisions for defense of his client's actual claim and for arguing the engine word. He has been similarly sanctioned for appeal challenges to Judge Brett's usurpations and abuses imposed in those former cases cited by Judge Brett's injunctive order

(Petition, Appendix A, at 24-25).

While long in arriving, this Petitioner and attorney has reluctantly realized the major problem. From the fact history mentioned, in part, by Judge Brett, it appears a select system exists to protect powerful wrongdoers, at least, at the instant district/circuit courts.

This Petitioner has acted upon his oath and unpleasant duty to bring his Petition to defend the vitality of the United States Constitution, and to protect his rights and those of his former client. His alternative was to forego such rights and duty, and, with awareness, endorse such select system and danger.

The clear message delivered by judicial abuses, as above discussed, is that this Petitioner is without rights, particularly fair appeal rights, except as secured through his Petition.

Such message continues, however.

2. The Suspension, Without Notice.

AA's disc word game has flaunted its select system influence at district/circuit level by seeking to improperly prejudice this Court.

At page 4 of AA's brief, AA mentions that, on January 15, 1993, the Petitioner was suspended from practice in the Federal Court for "vexatious litigation tactics." Such decisions are shown at AA's Appendix 63-71 as bearing the signatures of Judges Ellison, Brett and Cook. However, several important due process factors need to be mentioned.

1. The grievant was Reuben Davis, AA's attorney, who filed the disc word game before this Court and in AA's injunctive pleading (Petition, App. at 81-116).

2. Reuben Davis does not mention that his grievance and injunctive

pleadings were both filed in September, 1991, nor that his grievance unduly anticipated Judge Brett's injunctive abusive in support.

3. He does not mention that Chief Judge Ellison is his former partner and former attorney for AA.

4. He does not mention that Judges Brett and Ellison refused to disqualify for unfair predispositions.

5. He does not mention that on December 11, 1992, a copy of the Petition in this matter was supplied to such Panel, along with a stay request, pending this Court's decision involving the State Court case basing the grievance.

6. He does not clarify that the suspension mention of the Sooner and Burggraf case sanction by the 10th Circuit Court (Respondent's App. at 65) were imposed for this Petitioner's challenge to Judge Brett's abuses, or

that those were the cases mentioned in the intimidating sanction imposed by Judge Brett's March 31, 1992 injunction (Petition, at Appendix A, at 24-25).

7. He avoids mention that such Panel strained to unfairly give res judicata affect to AA's fraud benefit granted by Judge Brett's March 31, 1992 injunction and to the usurping and abusive disc word tactic and sanction findings, while upon formal notice of this Petition and a stay request.

8. He does not mention that Judge Cook refused to hear the December 18, 1990 discovered engine fraud upon the Court and Ms. Graham's rights, as being untimely filed on December 24, 1990 (Petition, at 14, App. at 148-150).

9. He fails to mention that such ethics Panel has withheld suspension notice to this Petitioner to date.

This Petitioner had assumed that

a stay had been properly granted. His suspension notice came from receipt of AA's brief in this matter, 38 days after the purported fact. Accordingly, a February 26, 1993 letter to Chief Judge Ellison, with copy to this Court, requests formal notice of a suspension, stay or grievance denial.

In Marshall v Jerrico (1980) 446 U.S. 238, 100 S.Ct. 1610, 1613, this Court reasoned that due process "neutrality" and its appearance is designed to prevent "distorted conceptions of the facts and law" and to deter "predisposed" decisions.

Such reasoning squarely supports this reply and explains why the Petition is proper.

CONCLUSION

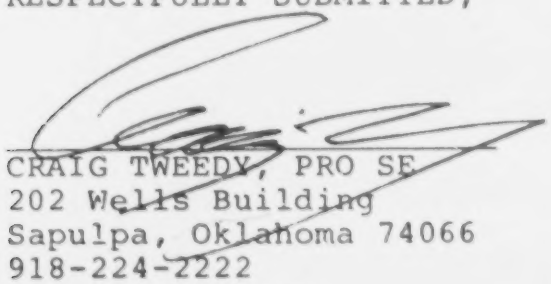
AA described the Petition as being based upon "wild allegations," and then arrogantly proceeded with its disc word

deceit to confess the Petition showing of the plain usurpation of power and jurisdiction, which were endorsed in a conclusory manner. AA's wild dishonesty with the Court is shown by the record facts and controlling law. It reveals select system facts and chilling appearances.

AA and its attorneys have shown the same disdain for federal court system, settled law and due process as it did for the FAA, which it influenced. When AA and the FAA were caught in their concealment of engine overhaul fraud by forged 1985 FAR engine records, AA merely returned to the federal courts for extended government protection. In seeking to retain the benefit of such fraud and judicial influence, they have, in effect, arrogantly and dishonestly challenged the authority and dignity of the Supreme Court of the United States.

The entitlement for extraordinary mandamus relief shown by the Petition has been clearly shown and confessed.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I, hereby, certify that on the 5th day of March, 1993, true and correct copies of the foregoing Reply Brief were deposited in the United States Mails, with proper postage thereon, and addressed to:

Robert L. Hoecker, Clerk, United States Court of Appeals for the Tenth Circuit, C404, United States Courthouse, 1929 Stout Street, Denver, Colorado 80294; and,

United States District Judge, Thomas R. Brett, Federal Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103; and,

Office of Solicitor General, Department of Justice, Washington D.C. 20530; and,

Reuben Davis and Frederic N.

Schneider III, 500 Oneok Plaza, 100 West 5th Street, Tulsa, Oklahoma 74103; and,

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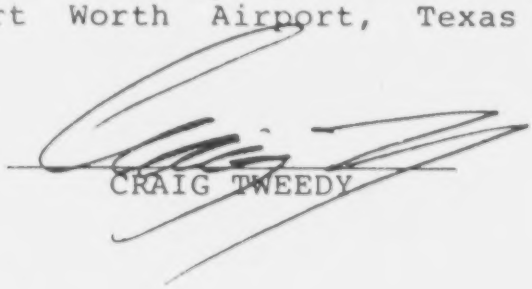

CRAIG TWEEDY

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

TULSA, OKLAHOMA, DATE: SEPTEMBER 20, 1990

LILLIAN A. GRAHAM, Plaintiff,	)	
v.	)	Case No. 86-C-815-C
AMERICAN AIRLINES, INC., Defendant.	)	Filed Sep 20, 1990

TO JACK C. SILVER, CLERK OF THE COURT:

Please enter the following minute order in the above entitled case:

At issue is the motion for summary judgment filed July 6, 1990, on behalf of defendants American Airlines, Inc., George Barton and Dennis Quish. Plaintiff responded in opposition on August 7, 1990. Defendants responded to plaintiff's response on August 16, 1990. And, finally, plaintiff supplemented her August 7 response on August 16, 1990.

Also at issue is the motion for summary judgment filed July 18, 1990. by defendant Transportation Workers Union of America, Local 514, which simply adopted

the motion for summary judgment filed by defendants American, Barton and Quish.

Finally, also at issue is defendant American's August 29, 1990, motion and sanctions (in the form of damage and claim preclusion) for plaintiff's failure to cooperate in discovery, to which plaintiff responded on September 14, 1990.

For reasons to be set forth in a subsequent written order the Court will grant these motions. Accordingly, counsel are excused, effective immediately, from all previously established deadlines and from all further trial preparation.

This is not a final order. It is issued solely for the benefit of informing counsel of the Court's future decisions.

IT IS SO ORDERED.

Signed/ Layn R. Phillips
LAYN R. PHILLIPS
United States District Judge